

v. 2951

No. 14909

United States
Court of Appeals
for the Ninth Circuit

MARION JONCICH, JOSEPH C. MARDESICH
and ANTONIA DOGDANOVICH,
Appellants,

vs.

ANTHONY VITCO, Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Central Division

PAUL P. CHASNIEN, CLERK

DEC 27 1955

FILED

No. 14909

United States
Court of Appeals
for the Ninth Circuit

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and ANTONIA DOGDANOVICH,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

Proctor for Appellants:

ROBERT SIKES,

1310 Wilshire Boulevard,
Los Angeles 17, California.

Proctors for Appellee:

MARGOLIS, McTERNAN & BRANTON,

112 West Ninth Street,
Los Angeles 15, California. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court for the Southern District of California, Central Division

In Admiralty—No. 16187-WM

ANTHONY VITCO, Libelant,
vs.

MARION JONCICH, JOSEPH C. MARDESICH,
ANTONIA DOGDANOVICH, DOE I, DOE
II and DOE III, Respondents.

SECOND AMENDED LIBEL

(Under 28 U.S.C. 1916, without prepayment of fees or costs and without security therefor)

Seaman's Libel in Personam for Maintenance, Cure and Share of Catch

To the Honorable the Judges of the above entitled Court:

The libel of Anthony Vitco, late seaman aboard the fishing vessel Pioneer, owned by the respondents above named, against said respondents and all persons intervening in their interests, in a cause of action for share of catch, maintenance and cure, civil and maritime, alleges:

I.

That libelant as a seaman elects to take advantage of the provisions of Title 28, U.S.C., Section 1916 and to proceed herein without prepayment of fees or costs and without security therefor. [2]

II.

That during all the times herein mentioned the respondents above named owned, operated, maintained and controlled the commercial fishing vessel Pioneer which was engaged in commercial fishing in navigable waters off the coast of California and Mexico; that libelant is a resident of San Pedro, California, and that so far as known to libelant the respondents herein known by name, Marion Joncich, Joseph C. Mardesich, and Antonia Dogdanovich, are all residents of the City of San Pedro in the County of Los Angeles, State of California.

III.

That at all times herein mentioned libelant was a fisherman who was employed by the respondents and each of them as a member of the crew of said fishing vessel Pioneer at wages in the form of a share of the proceeds of the catch of said vessel; that said libelant was employed by the respondents pursuant to an oral agreement of hiring for the period of the tuna fishing season of the year 1952.

IV.

That libelant was in the service of the respondents and the aforesaid Pioneer until January 29, 1952, at which time he was compelled to leave the service of respondents and said vessel due to illness, to-wit: A serious heart attack suffered while in the service of said vessel, which illness rendered libelant unable to continue his employment with respondents.

V.

That as a result of the illness suffered by libelant while in the employ of respondents, he was caused and required to, and did receive general medical care and attention, including the services of doctors, x-ray and laboratory examinations, and drugs; that the libelant has incurred obligation for and the expense of said medical care and attention in the amount of Four Hundred and [3] Eighty-Eight (\$488.00) Dollars, which said charges are reasonable and fair; that said medical care was not made available to libelant through recourse to the facilities of the United States Public Health Service.

VI.

That since libelant became ill in the service of respondents' vessel and during which period of time it was necessary for him to maintain himself, he incurred expenses for and is entitled to maintenance in the reasonable sum of Eight Dollars (\$8.00) daily during such periods of time as he has required medical care for the relief or cure of said illness, or was convalescing therefrom, and during which time he was unable to resume his former occupation of fisherman. That at the time hereof there is now due, owing and unpaid from respondents to libelant as and for maintenance the sum of Five Thousand Five Hundred and Fifty-Two Dollars (\$5552.00), being maintenance for a period of six hundred and ninety-four (694) days, that is, from the date of leaving the vessel to the date of filing of the original libel herein.

VII.

That libelant became ill as aforesaid while the Pioneer was engaged in tuna fishing and libelant had been hired by respondents to serve aboard said vessel as a member of the crew during the tuna season of the year 1952. That libelant is entitled to and claims a full share of the catch of said vessel during said tuna season aforementioned. That libelant does not now know the full amount of said share to which he is entitled and, therefore, prays leave of court to amend this libel to show the correct amount thereof when the same has been ascertained, or to offer proof thereof at the time of trial.

VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and [4] this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the course of this Honorable Court and in causes of admiralty and maritime jurisdiction may issue, and that citation in personam may issue against the respondents or any person claiming any interests in the said Pioneer, and that said respondents or other persons be required to appear and answer upon oath all and singular the matters aforesaid and that this Honorable Court may be pleased to decree the payment by respondents of the sum of Five Thousand Five Hundred and Fifty-Two Dollars (\$5552.00) to libelant, together with such further maintenance, ex-

penses of cure and share of catch as may be hereafter ascertained, and with interests and costs of suit herein and such other and further relief as is meet and just in the premises.

Dated: March 31st, 1954.

MARGOLIS, McTERNAN and
BRANTON,

/s/ By LEO BRANTON, Jr.,
Proctors for Libelant [5]

Duly Verified.

Acknowledgment of Service attached. [6]

[Endorsed]: Filed April 5, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on the 23rd day of February, 1955, before the Court, the Honorable William Mathes presiding sitting without a jury, Margolis, McTernan and Branton, by Ben Margolis, appearing as proctors for the libelant and Robert Sikes, Esq., appearing as proctor for the respondents, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the Court for decision, and the Court being fully advised in the premises now makes its Findings of Fact as follows:

Findings of Fact

1. It is true that at all times herein mentioned the respondents Marion Joncich, Joseph C. Marde-sich and Antonia Dogdanovich owned, operated, maintained and controlled the commercial fishing vessel "Pioneer" which was [7] engaged in commercial fishing in navigable waters off the coasts of California and Mexico; that libelant and all respondents at all times herein mentioned were and they now are residents of the City of San Pedro, County of Los Angeles, State of California.

2. It is true that at all times herein mentioned libelant was a fisherman and that in the fall of 1951 he was hired by respondents as a member of the crew of said fishing vessel "Pioneer" at wages in the form of a share of the proceeds of the catch of said vessel and said employment of libelant by respondents was pursuant to an oral agreement of hiring for the period of the tuna fishing season of the year 1952.

3. It is true that libelant was in the service of the respondents and the aforesaid "Pioneer" until January 29, 1952, at which time he was compelled to leave the service of respondents and said vessel due to illness, to-wit, a serious heart attack suffered while in the service of said vessel, which illness rendered libelant unable to continue his employment with respondents.

4. It is true that as a result of the illness suffered by libelant while in the employ of respondents, he was caused and required to, and did receive general medical care and attention, including the

services of doctor, x-ray and laboratory examinations, and drugs; that the libelant has incurred obligation for and the expense of said medical care and attention in the amount of Four Hundred and Eighty-three (\$483.00) Dollars, which said charges are reasonable and fair; that of said sum of \$483.00 the sum of \$348.00 was incurred by libelant for his own account with the physician to whom he was referred by his proctors and the sum of \$135.00 was incurred by libelant with the physician to whom he was referred by respondent Joncich, by reason of which reference respondents authorized the private service and consented to bear the said physician's reasonable charge in the sum of \$135.00.

5. It is true that after libelant became ill in the service of respondent's vessel and was compelled to leave said vessel on the 29th day of January, 1952, it was necessary for libelant to maintain himself and he is entitled to maintenance from respondents at the agreed rate of \$6.00 per day [8] from the time the illness compelled him to leave the vessel on January 29, 1952, until October 15, 1954, when libelant's physician reasonably and in good faith determined for the first time that libelant had reached the state of maximum possible recovery in August of 1954, and that further treatment would not advance cure: that there is now due, owing and unpaid from respondents to libelant as and for maintenance the sum of \$5,834.00.

6. It is true that libelant became ill as aforesaid while the "Pioneer" was engaged in tuna fishing and libelant had been hired by respondents to serve

aboard said vessel as a member of the crew during the full tuna season of the year 1952; that libelant is entitled to a full share of the catch of said vessel during said tuna season aforementioned; that the amount due, owing and unpaid from respondents to libelant as and for his share of the tuna catch for the 1952 season of said vessel "Pioneer" is Six Thousand Six Hundred Eighty-one and 95/100 (\$6,681.95) Dollars, less appropriate withholding and social security tax deductions as required by law to be withheld and deducted by respondents and paid over by them to the appropriate government agencies.

7. It is true that at all times herein mentioned subsequent to January 29, 1952, libelant was totally disabled.

8. It is true that all and singular the premises are within the admiralty and maritime jurisdiction of the United States and of this Court.

9. It is not true that the contract of employment between libelant and respondents was entered into either as a result of a mutual mistake of fact on the part of libelant and respondents or that it was entered into as a result of a fraudulent concealment by libelant of his actual physical condition. [9]

10. It is true that at the time that the contract of employment was entered into between libelant and respondents there was in full force and effect a collective bargaining agreement by and between said respondents representing the vessel "Pioneer"

and the Fishermen and Allied Workers of America, Local 33, representing fishermen including the libelant, paragraph 5 of which agreement read as follows:

“In the event illness incapacitates any crew member from [10] further work aboard the vessel he shall be entitled to receive his proportionate share of the earnings of the vessel to the date and hour said member leaves the boat. Upon regaining his health, he shall be reemployed on the boat. During illness, such member may be substituted for by another man. An ill member cannot demand his share while ashore. This paragraph does not pertain to a member injured on the boat.”

The said paragraph 5 of said collective bargaining agreement is contrary to the established public policy of the Maritime Law to protect from impairment the seaman's historical right to maintenance and cure and to wages for the term of his employment.

From the foregoing facts the Court concludes:

Conclusions of Law

1. Libelant is entitled to judgment against respondents in the sum of \$135.00 for medical bills; \$5,834.00 for maintenance; and \$6,681.95 less appropriate withholding and social security tax deductions as required by law for wages or share of the catch.

2. Libelant is entitled to judgment for his costs and disbursements incurred or expended herein.

Let judgment be entered accordingly.

Dated: This 21st day of May, 1955.

/s/ WM. C. MATHES,
Judge [11]

[Endorsed]: Lodged May 16, 1955. Filed May 23, 1955.

[Title of District Court and Cause.]

ANSWER TO SECOND AMENDED LIBEL

Respondents, Marion Joncich and Joseph C. Mardesich, answer the second amended libel, as follows:

I.

Answering the allegations in Article I respondents deny that libelant is entitled to proceed pursuant to the provisions of Title 28 U.S.C., Section 1916.

II.

Respondents admit the allegations in Article II.

III.

Respondents admit the allegations in Article III with the following proviso: At the time the said oral agreement was made the libelant impliedly represented and warranted to the respondents that he was an able bodied seaman and that he was not afflicted with any disease which would interfere with his performance of said [12] contract. Re-

spondents are informed and believe and therefore allege that at the time of the making of said agreement the libelant was not able bodied but was then suffering from some sclerotic condition involving his heart and that the said contract of employment was entered into either as a result of a mutual mistake of fact on the part of libelant and respondents or was entered into as a result of a fraudulent concealment by libelant of his actual physical condition.

IV.

Answering the allegations in Article IV respondents admit that the libelant left the said vessel on January 29, 1952, and that up to said time, with the exception of periods when he was not required to do any work, he was in the service of respondents pursuant to said purported contract of employment hereinabove referred to. Respondents have no information or belief upon the subject sufficient to enable them to answer the remaining allegations in Article IV and placing their denial thereof upon said ground deny said allegations and each thereof.

V.

Respondents have no information or belief upon the subject sufficient to enable them to answer the allegations in Article V and placing their denial thereof upon said ground deny said allegations and each thereof.

VI.

Respondents have no information or belief upon the subject sufficient to enable them to answer the

allegations in Article VI and placing their denial thereof upon said ground deny said allegations and each thereof and upon the same ground deny that there is now or at all due or owing or unpaid from respondents to libelant as or for maintenance the sum of \$5,552.00 or any sum whatsoever or at all.

VII.

Respondents have no information or belief upon the subject sufficient to enable them to answer the allegations in Article VII and placing their denial thereof upon said ground, excepting as hereinabove admitted or alleged, respondents deny said allegations and each thereof. In addition, respondents allege that if said oral contract of employment was valid then the said contract also provided that in the event the libelant became ill while in the service of the vessel he would not be entitled to any share of the catch of said vessel from the date upon which he might leave the same. At the time said purported contract of employment was made it was the custom and practice of the owners of fishing vessels and the members of the crew thereof at the place where said purported contract was made that no fisherman would be entitled to any share of the catch of a vessel from and after the time he might leave the service of such vessel by reason of any actual illness suffered while in the service of such vessel.

VIII.

Respondents deny that all or singular the premises are or that any thereof is true excepting as

hereinabove admitted. Admit that the premises are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, respondents pray that the second amended libel be dismissed, that they have and recover any costs of suit herein, and for such other and further relief as the Court may deem proper in the premises.

/s/ LASHER B. GALLAGHER,
Proctor for Respondents, Marion Joncich and Joseph C. Mardesich. [14]

Duly Verified. [15]

[Endorsed]: Filed May 24, 1954.

In the United States District Court for the Southern District of California, Central Division

In Admiralty—No. 16187-WM

ANTHONY VITCO, Libelant,
vs.

MARION JONCICH, JOSEPH C. MARDESICH,
ANTONIA DOGDANOVICH, DOE I, DOE
II and DOE III, Respondents.

JUDGMENT AND DECREE

(Judgment for Maintenance, Cure and Share
of the Catch)

This cause having been brought on for trial before the Honorable William Mathes, Judge of the

above entitled Court, on the 23rd day of February, 1955, the Court sitting without a jury, and the decision of the Honorable William Mathes made in writing having been duly filed herein on the 29th day of April, 1955, finding in favor of Anthony Vitco, libelant, and against Marion Joncich, Joseph C. Mardesich and Antonia Dogdanovich, respondents, and Findings of Fact and Conclusions of Law having been duly made in writing and having been duly filed herein on the 21st day of May, 1955, in accordance with said decision,

Now, Therefore, It Is Hereby Adjudged and Decreed that libelant shall have judgment against respondents in the sum of \$135.00 for medical expenses, \$5,834.00 for maintenance, and \$6,681.95 for libelant's share of the catch less appropriate withholding and social security tax deductions [17] as required by law, to-wit, a total of \$12,650.95 less social security and withholding deductions from the share of the catch only, together with \$141.65 costs.

Dated: This 21st day of May, 1955.

/s/ WM. C. MATHES,
Judge [18]

Acknowledgment of Service attached.

Docketed and Entered May 24, 1955.

[Endorsed]: Lodged May 16, 1955. Filed May 23, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

The Respondents hereby appeal to the United States Court of Appeals, Ninth Circuit, from the Final Decree of this Court entered herein on May 24, 1955, and from each and every part thereof.

Dated: June 29, 1955.

/s/ ROBERT SIKES,
Proctor for Respondents and
Appellants [19]

Affidavit of Service by Mail attached. [20]

[Endorsed]: Filed June 30, 1955.

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The Petition of Respondents for an appeal from the Final Decree entered in the above entitled cause on May 24, 1955, is hereby granted and the appeal is allowed.

It Is Further Ordered that a certified transcript of the record herein be forthwith transmitted to the United States Court of Appeals, Ninth Circuit.

Dated at Los Angeles, California, this 1st day of July, 1955.

/s/ ERNEST A. TOLIN,
United States District Judge

Note: Judge Matthes was out of the district when this was signed—Ernest A. Tolin, J. [21]

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 30, 1955.

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable William C. Mathes, Judge of the United States District Court, Southern District of California, Central Division:

Respondents respectfully pray that they be permitted to take an appeal from the Final Decree entered in the above Court on May 24, 1955, to the United States Court of Appeals, Ninth Circuit, for the reasons specified in the Assignments of Error which are filed herewith.

Dated: June 29, 1955.

/s/ ROBERT SIKES,

Proctor for Respondents [22]

Affidavit of Service by Mail attached. [23]

[Endorsed]: Filed June 30, 1955.

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Come now the Respondents and hereby assign the following errors in the above entitled proceedings:

I.

The District Court erred in finding that the libellant was hired by respondents for the period of the tuna fishing season of the year 1952.

II.

The District Court erred in failing to find that the libelant was suffering from an acute inflammatory bronchial or pulmonary or pharyngeal esophagitis at the time he left the vessel "Pioneer" on June 29, 1952.

III.

The District Court erred in finding that the libelant suffered a serious heart attack while in the service of said vessel [26] "Pioneer" which rendered libelant unable to continue his employment with respondents.

IV.

The District Court erred in finding that libelant was entitled to maintenance from January 29, 1952, until October 15, 1954, and that there was at the time of the making of the Findings of Fact and Conclusions of Law the sum of \$5,834.00 due, owing and unpaid from respondents to libelant as and for maintenance.

V.

The District Court erred in failing to find that libelant was entitled to maintenance, if any, from January 29, 1952, until August 1, 1954, and that there was due, owing and unpaid, if any, from respondents to libelant as and for maintenance, the sum of \$5,484.00.

VI.

The District Court erred in finding that libelant had been hired by respondents to serve aboard the

said vessel during the full tuna season of the year 1952; the District Court further erred in finding that the libelant was entitled to a full share of the catch of said vessel during the full tuna season of the year 1952; and in finding that the amount due, owing and unpaid from respondents to libelant as and for his share of the tuna catch for the 1952 season of said vessel was \$6,681.95, less taxes.

VII.

The District Court erred in failing to find that libelant, pursuant to the provisions of Paragraph V of Exhibit "D," the collective bargaining agreement between libelant's Union and the respondents, the custom and practice involved, and the shipping articles in evidence, was entitled to no sum whatsoever as his share of the catch during the year 1952.

VIII.

The District Court erred in failing to find, as an alternative [27] to the error hereinabove next referred to, that the libelant was entitled only to a share of the catch for the first half of the year 1952 in an amount of \$5,213.91, based on Paragraph XIV of said Exhibit "D."

IX.

The District Court erred in finding that at all times mentioned in the Findings of Fact subsequent to January 29, 1952, that libelant was totally disabled.

X.

The District Court erred in finding that Paragraph V of the said collective bargaining agreement is contrary to the established public policy of the maritime law to protect from impairment the seaman's historical right to maintenance and cure and to wages for the term of his employment.

XI.

The District Court erred in failing to find that said Paragraph V of said collective bargaining agreement was at all pertinent times a valid subsisting and effective provision of said collective bargaining agreement and was binding on the libelant and the respondents.

XII.

The District Court erred in concluding from the Findings of Fact that the libelant was entitled to judgment against respondents in the sum of \$5,-834.00 for maintenance; in concluding that libelant was entitled to judgment in the amount of \$6,-681.95, less taxes, for wages or share of the catch; and in concluding that libelant was entitled to judgment for his costs and disbursements therein.

Dated this 29th day of June, 1955.

/s/ ROBERT SIKES,

Proctor for Respondents [28]

Affidavit of Service by Mail attached. [29]

[Endorsed]: Filed July 8, 1955.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET APPEAL IN UNITED STATES
COURT OF APPEALS

Good cause appearing therefor, It Is Hereby Ordered that the appellants may have to and including September 16, 1955, within which to file and docket their appeal in the United States Court of Appeals.

Dated: August 3, 1955.

/s/ WM. C. MATHES,
United States District Judge [30]

[Endorsed]: Filed August 4, 1955.

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[Title of District Court and Cause.]

CITATION ON APPEAL

United States of America—ss.

To: Anthony Viteo, and to his Proctors, Margolis,
McTernan and Branton—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of Los Angeles, in the State of California, on the 16th day of September, A.D. 1955, pursuant to an order allowing appeal filed on July 1st, 1955, in the Clerk's office of the District Court of the United

States, in and for the Southern District of California, in that certain Cause No. 16187-WM, Central Division, wherein Marion Joncich, Joseph C. Mardesich and Antonia Dogdanovich are appellants and you are appellee, to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William C. Mathes, United States District Judge for the Southern District of California, this 8th day of August, A.D. 1955, and of the Independence of the United States, the one hundred and seventy-ninth year.

JOHN A. CHILDRESS, Clerk,
U.S. District Court, Southern District
of California

/s/ EDW. DREW, Deputy.

Service of a copy of the foregoing Citation and copies of Petition for Appeal, Order Allowing Appeal, Assignments of Error, Praecipe and Order Extending Time to File and Docket Appeal in United States Court of Appeals is acknowledged this 8th day of August, 1955.

/s/ LEO BRANTON, Jr., for
Margolis, McTernan and Branton,
Attorney for Appellee [31]

[Endorsed]: Filed August 10, 1955.

[Title of District Court and Cause.]

BOND ON APPEAL
(Supersedeas and for Costs)

Know All Men By These Presents:

Whereas, respondents Marion Joncich, Joseph C. Mardesich, and Antonia Dogdanovich have appealed or are about to appeal from that certain Final Decree heretofore made and entered in the above entitled cause on May 24, 1955; and

Whereas, Fireman's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California and qualified to act as a surety in this Court, is held and firmly bound unto the Libelant herein and unto whom it may concern in the sum of Fourteen Thousand Dollars (\$14,000.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns firmly by these presents and agrees that in case of default on the part of the said appellants, Marion Joncich, Joseph C. Mardesich and Antonia Dogdanovich, in the payment of the satisfaction of the judgment in full heretofore [32] entered, together with all costs, interests and damages for delay, the said Fireman's Fund Indemnity Company, a corporation, will make such payment in full if for any reason the said appeal is dismissed or if the judgment is affirmed, and further agrees to pay in full in the event of any default therein on the part of the said appellants such modification of the judgment and such costs,

interests and damages as the Appellate Court may adjudge and award herein.

The condition of this obligation being that if the above-named appellants shall successfully prosecute their said appeal, then the above obligation on the part of Fireman's Fund Indemnity Company shall be void; otherwise, the same shall be and remain in full force and effect.

Dated: July 22, 1955, at Los Angeles, California.

FIREMAN'S FUND INDEMNITY
COMPANY,

/s/ By JOHN M. ARNOTT,
Attorney-in-Fact

Examined and recommended for approval as provided in Rule 13.

/s/ ROBERT SIKES,

Proctor for Respondents and Appellants Marion Joncich, Joseph C. Mardesich, and Antonia Dogdanovich.

I hereby approve the foregoing bond this 30th day of August, 1955.

/s/ WM. C. MATHES,

United States District Judge [34]

The premium charged for this bond is 260 dollars per annum.

Notary Public's Certificate attached.

[Endorsed]: Filed August 30, 1955.

[Title of District Court and Cause.]

BOND ON APPEAL
(Supersedeas and for Costs)

Know All Men By These Presents:

Whereas, respondents Marion Joncich, Joseph C. Mardesich, and Antonia Dogdanovich have appealed or about to appeal from that certain Final Decree heretofore made and entered in the above entitled cause on May 24, 1955; and

Whereas, Fireman's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California and qualified to act as a surety in this Court, is held and firmly bound unto the Libelant herein and unto whom it may concern in the sum of Fourteen Thousand Dollars (\$14,000.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns firmly by these presents and agrees that in case of default or contumacy on the part of the said Appellants, Marion Joncich, Joseph O. Mardesich and Antonia Dogdanovich, execution may issue against them, their goods, chattels [35] and lands;

Now, Therefore, the condition of this obligation is such that if the above named Appellants shall prosecute their appeal with effect and answer all damages and costs if they fail to make their plea

good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, this 6th day of July, 1955.

FIREMAN'S FUND INDEMNITY
COMPANY,

/s/ By A. I. STODDARD,
Attorney-in-Fact

Examined and recommended for approval as provided in Rule 13.

/s/ ROBERT SIKES,

Proctor for Respondents and Appellants Marion Joncich, Joseph C. Mardesich, and Antonia Dogdanovich.

I hereby approve the foregoing bond this 7th day of July, 1955.

/s/ LEON R. YANKWICH,

United States District Judge. [35]

Notary Public's Certificate attached. [36]

[Endorsed]: Filed July 7, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 36, inclusive, contain the original Second Amended Libel; Findings of Fact and Conclusions of Law; Answer to Second Amended Libel; Judgment and Decree; Notice of Appeal; Order Allowing Appeal; Petition for Appeal; Praecipe; Assignments of Error; Order Extending Time; Citation; Bond on Appeal (2) which, together with the original defendants' exhibits A-D, inclusive and plaintiff's exhibits 1-6, inclusive; and two volumes of reporter's transcript of proceedings, in the above-entitled case constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellants.

Witness my hand and the seal of said District Court, this 19th day of October, 1955.

[Seal]

JOHN A. CHILDRESS,

Clerk

/s/ By CHARLES E. JONES

In the United States District Court for the Southern District of California, Central Division

In Admiralty—No. 16187-WM

ANTHONY VITCO, Libelant,

vs.

MARION JONCICH, JOSEPH C. MARDESICH,
ANTONIA DOGDANOVICH, DOE I, DOE
II and DOE III, Respondents.

TRANSCRIPT OF PARTIAL PROCEEDINGS

Los Angeles, California, Feb. 23, 1955

Honorable William C. Mathes, Judge presiding.

Appearances: For Libelant: Margolis, McTernan & Branton, by Ben Margolis, 112 West Ninth St., Los Angeles 15, California. For the Respondents: Robert Sikes, 1256 West First St., Los Angeles 26, California. [1*]

(Opening statements made by counsel.)

ANTHONY VITCO

called as a witness by the libelant, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Anthony Vitco.

Direct Examination

Q. (By Mr. Margolis): Mr. Vitco, just sit back and relax, please. And if you should get tired, just

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Anthony Vitco.)

tell me. Now, try to speak so that all of us can hear you. Try to keep your voice up. Where do you live, Mr. Vitco? A. In San Pedro.

Q. What address?

A. 1082 West 13th Street.

Q. When and where were you born?

A. I was born in Yugoslavia in 1897, the 26th of December.

Q. How long did you live in Yugoslavia, until what year? A. Until 1921.

Q. And where did you come at that time?

A. I came in 1921, in July, in the United States.

Q. And you have lived in the United States ever since, have you, Mr. Vitco? A. Yes, sir.

Q. Now, what education did you have?

A. I have sixth grade of grammar schooling in Europe.

Q. And did you have any education in the United States? A. No, sir.

Q. Did you have any education preliminary to obtaining your citizenship papers?

A. Yes, sir. I went to school there for about a month—night school.

Q. Now, when did you first go to work, and what kind of work?

A. When I first came in this country?

Q. No, when you first went to work, whether it was in this country or elsewhere?

A. I went to work on a ship when I was 12 years old, in Europe.

Q. What kind of work?

(Testimony of Anthony Vitco.)

A. Well, I was a mess boy at that time.

Q. Did you continue to work at that job all the time you were in Europe?

A. Well, yes, until I got drafted.

Q. And you were in the army in World War I?

A. Yes, I was.

Q. For how long?

A. I was two years in the army and two years prisoner—four years all together.

Q. Then when you got out of the army did you go back to that kind of work?

A. For a short time until I got my sister's paper to come over to this country.

Q. When you came to the United States to what city did you come first of all?

A. I land in New York and then I came to my sister in Seattle, Washington.

Q. Did you go to work shortly after you came here?

A. Three days after I came here.

Q. What kind of work?

A. Well, at that time I went to work in a lumber yard, in a sawmill.

Q. How long did you do that?

A. For about a year.

Q. Then what did you do?

A. Then I went fishing, in my trade as a cook.

Q. When you say you went fishing as a cook, you will be referring, I think, to other times that you went fishing. During all the time that you have been fishing have you always shipped out as a cook?

A. Yes, sir.

(Testimony of Anthony Viteo.)

Q. What was that, about 1922 that you started fishing as a cook?

A. '22. I believe so—'22 or '23. It would be '22 or '3. '22, I think.

Q. And did there come a time when you moved to San Pedro?

A. In 1924, in fall; or '25.

Q. In 1924 or '25?

A. That's right. '25.

Q. All right. Have you lived in San Pedro ever since? A. Ever since.

Q. Now, during the time that you have lived in San Pedro have you also continued to work on fishing boats as a cook?

A. All the time, yes, sir.

Q. Have you engaged in any other occupation?

A. No, sir. Always I did cooking, fishing.

Q. I wonder if you could tell his Honor briefly what a cook does on a vessel, a fishing vessel? What his duties are?

A. His duties are to cook as many meals—if it's 12 hours a day work, he cooks three meals. And he helps with the fish, with the net.

Q. Anything else? [6]

A. Well, he have to carry provisions, beer and meat and potatoes from the pilot house down to the galley, because we have boxes on the pilot house. And everything; bake,—everything.

Q. And does the work, does that involve heavy lifting?

A. Sometimes it does, sir. Sometimes you work

(Testimony of Anthony Vitco.)

with the freezer where you have to prime your door open because it is froze. And then you use your arms to pull that. Sometime you take a sack of 100 pound potatoes and move that over. Boxes of beer and 7-up. It's hard. All depends on how strong you are.

Q. What part of the fishing operations does the cook engage in?

A. In the fishing operation, I would say me and Mr. Mardesich and a couple other guys will pass the fish, when we catch a hundred tons of fish, that is our job, to pass all that fish to the main hold, to the boys that are icing the fish down. Plus, I have to do the cooking and mix drinks and cooking and washing and help the boys. Because if I don't help on the deck there is two guys idle, they couldn't do any work because I have my special main hole where I pass the fish.

Q. Now, from 1925 until 1952 did you ever miss a single season of fishing?

A. A season? Never, sir. Never a season. [7]

Q. Did you miss parts of seasons because of illness? A. Yes, sir, I did.

Q. I am talking now about the period from 1925 to 1952. You understand that?

A. Between 1925 and 1952, yes.

Q. Do you remember when or about when was the first illness that you had that you missed some time at work?

A. I remember about two months and a half in '48.

(Testimony of Anthony Vitco.)

Q. Do you remember one in 1934?

A. In San Francisco? I missed about three or four days once in San Francisco.

Q. Well, maybe I can—do you remember having tonsil trouble?

A. Yes, sir. Well, I missed only one trip that time.

Q. What year was that?

A. That was in '34, sir.

Q. You had your tonsils removed?

A. Yes, sir. I sent another man in my place, to remove my tonsils and just lost one trip, sir. I didn't get paid for that because the other man got that.

Q. Now, a trip usually lasts four to six weeks, is that right?

A. They made it in 31 days at that time. I was well to go back. I went back.

Q. You went back on the same boat? [8]

A. On the same boat.

Q. Do you remember an illness in 1939 when you were working in San Francisco?

A. Yes, I do.

Q. And did you have the flu at that time?

A. I had a temperature of 101. Had a little cold. And I went in the Marine Hospital to take a check and the doctor says, "You got some temperature. You better go off here for a couple of days." I went up there three days and they released me and I went fishing back again.

Q. You missed three or four days? You were

(Testimony of Anthony Vitco.)

an inpatient, were you, at the Marine Hospital in San Francisco? A. That's right.

Q. About 1939? A. Must have been.

Q. Did you again miss some time in 1945, six years later. Do you remember when you were fishing on the White Rose?

A. Oh, yes, sir. I did miss that time. Yes, sir. I went to hospital for about seven days. I think I had a little operation that time.

Q. What kind of an operation was it?

A. Well, Dr. Belt thought that I had something in—like a little rock or stone or something—I don't know. Was insured, and he—— [9]

Q. Where? What part?

A. In the bladder, sir.

Q. You had a little bladder operation?

A. That's right. It was very small.

Q. How long were you off work then?

A. Oh, we were fishing locally here, sir.

Q. For how long were you off work?

A. Not too long; very little time. In a week's time—I, of course, took a month off that time, for sure. I must have been off about a month. They were fishing local here. If they were ready to go down south, I would be ready to go.

Q. Did you again go back to the same boat you were working on? A. Yes, sir.

Q. Now, was the next time that you were sick three years later in April 1948?

A. In '48, sir, I got sick on the same boat on Pioneer down by Acapulco in '48.

(Testimony of Anthony Viteo.)

Q. Were you fishing down by Acapulco?

A. That's right.

Q. And you got sick while you were on the boat?

A. Yes, sir.

Q. What happened then?

A. Well, it was very hot down there at that time, and I was supposed to keep my skipper on a diet, Mr. Joncich, and [10] I have to use—every time when I use steaks or lamb chops he wants it to be broiled. While this stove—we didn't have gas range, we had oil range. I have to make all the top grade in order to brown the little chops or steak in the oven, so with all the heat we have outside and inside the small galley I got roasted there in a week's time and then I must have passed out and I got so weak I couldn't eat from big heat and they sent me home.

Q. How much time were you off then?

A. I lost that time, if I am not wrong, a couple of months, because they hire another cook. I was ready to go back in a month but the skipper say, "Well, we will give this cook a chance to make a little more money." So he kept me home for about two trips, I think. I went back again on the same boat, sir.

Q. From 1948 until 1952, following that illness in 1948, did you miss any time at all?

A. I don't believe so, sir. I don't think so.

Q. Now, were you ill or were you having some health difficulties in the latter part of 1951?

A. Sir, not—I didn't stop working. I had a lit-

(Testimony of Anthony Vitco.)

tle cold, a tickle of the throat, and that didn't deprive me of my work. I work every day. Didn't have no temperature or anything that would keep me idle. I was working. And I went to doctor and he gave me some—he says I had a little cold, [11] ticklish throat, and he gave me some medicine, some green medicine to take three—every three hours teaspoonful. And to be frank with you, I think in a day or two that clears up and——

Q. Well, during that time did you go to the United States Public Health Service a few times?

A. Oh, yes, I did. But that was before I went to——

Q. And then you went to a private doctor?

A. That's right. I went to U.S. and he told me, "There is nothing wrong with you."

He says, "You are fit for duty." He says, "You got little bronchitis like any fisherman. But you are okay." He says, "Go ahead."

He didn't give me nothing for a cold, sir. And then this other fellow, this doctor gave me this other medicine, it was very good for me. He fixed me up there.

Mr. Margolis: All right. I have already shown to counsel, and I have here an abstract from the United States Public Health Service, your Honor, covering the period 9/4/51 to 11/16/51 for Mr. Vitco, showing they found him fit for duty as of that time. And I would like to offer that in evidence for the purpose of showing that he was found fit for duty.

(Testimony of Anthony Vitco.)

Mr. Sikes: If the court please, at this time I have no objection to the diagnosis shown thereon. But I certainly [12] want to make my position clear. With regard to other United States Public Health records, I do not wish to waive my right to object to them on the grounds that they do contain a diagnosis and they are not admissible under the law. I will not object to this particular one, though.

The Court: As to it, do you stipulate that it is a genuine document and in all respects that it purports to be?

Mr. Sikes: That is correct.

The Court: Very well. It may be received in evidence as Libelant's Exhibit—1?

The Clerk: 1, your Honor.

(The exhibit referred to was received in evidence and marked Libelant's Exhibit 1.)

Q. (By Mr. Margolis): Now, Mr. Vitco, up to the time that you went fishing in December of 1951, had any doctor or any hospital or anyone at all ever told you that you had any kind of heart trouble? A. Never, sir.

Q. During the period of time that you worked in San Pedro from 1925 to 1952, what kind of vessels did you ship on? By that I mean for what did they fish?

A. When we were fishing sardines, I used to fish sardine season locally, which is in San Francisco and Pedro; and also every season I went down for tuna.

(Testimony of Anthony Vitco.)

Q. Do you know whether there are boats or have [13] been in San Pedro during the period of time you were fishing, boats which fish sardines part of the year and tuna part of the year and other boats which fish tuna all year round?

A. I fish on both of those kind of boats.

Q. But there were boats that fished tuna all year round?

A. All the year round, and smaller ones, particularly sardines and tuna.

Q. Now, involved here is the vessel Pioneer. In 1951 what kind of a vessel was that from the standpoint of the kind of fishing it engaged in?

A. Mr. Joncich, in '51, when he asked me to come——

Q. What kind of fishing was it?

A. Strictly tuna.

Q. Year round tuna?

A. Year round tuna.

Q. From your knowledge of the fishing industry, gained from working in it during this approximately 27-year period in San Pedro, I will ask you whether you know whether there is a custom with respect to men who are employed on a boat doing work on that boat before it starts out on a fishing trip?

A. Yes, it is custom. That is our job, to prepare the boat.

Q. Now, taking the tuna boat which goes fishing all year round, generally what time of the year is that work done on the boat? [14]

(Testimony of Anthony Vitco.)

A. They usually—we usually prepare our boats before Christmas.

Q. And about how long a period of time does it take to prepare the boats?

Mr. Margolis: Excuse me, your Honor. There may be no dispute about this.

Mr. Sikes: I am perfectly willing to stipulate there is this period before a boat actually goes out in which, your Honor, certain necessary preparations must be done. And that regards the net, among other things; and that there is this period in here in which they are within the service of the vessel.

The Court: That period involves, customarily, how much time?

Mr. Sikes: Well, I can't say that.

Mr. Margolis: Well, would it be correct, if I asked Mr. Mardesich, to be from four to six weeks?

Mr. Mardesich: The union allows a man to work six days.

Mr. Sikes: Before the vessel——

Mr. Margolis: Preparing the boat.

Mr. Mardesich: The net is usually prepared in four days.

Mr. Sikes: And the net in four days.

Mr. Margolis: We had better put on testimony, your Honor.

Q. (By Mr. Margolis): Mr. Vitco, what is the practice——

Mr. Margolis: Your Honor, I won't go into the details [15] on which there is in effect an agreement. I will just go into the time factor.

(Testimony of Anthony Vitco.)

One more thing. That covers such things as painting the boat, getting it cleaned up, and so forth. I think we agree on that.

Mr. Sikes: That's correct.

Mr. Margolis: Getting the provisions on.

The Court: And that is performed by the fishermen who are employed for the season with a share of the catch, is that correct?

Mr. Sikes: That is done by the fishermen who are employed for——

Mr. Margolis: Well, employed to go fishing.

Mr. Sikes: Who are employed to go fishing, yes, sir, for a share of the catch.

Mr. Margolis: Our contention is that the custom is that it is for the season, but the stipulation doesn't cover that, your Honor.

Q. (By Mr. Margolis): Mr. Vitco, how long does this work usually take?

A. Mr. Margolis, I don't know nothing about the low, but if you can ask Mr. Mardesich how long we work——

Q. Mr. Vitco, let me explain something to you. Let's not try to argue with anybody here. If you will just try to answer my question. My question is this: I am not asking [16] about 1951 at this time. I am asking you what the custom is as to how long it usually takes.

A. Okay, sir. It takes a month or two. All depends on how much work is to be done on the net and on the boat.

(Testimony of Anthony Vitco.)

Q. And for this work the men receive no compensation, is that right?

A. No transportation or nothing. You have to pay your own transportation and your own board and everything else for this. When you bring the fish in that is deducted out of your fish, whatever you spent those days aboard——

Q. For food? A. ——for food.

Q. It is the custom, is it not, on these boats for men to buy food collectively and pay for their food out of their share of the catch, is that right?

A. Yes, sir.

Q. And that food includes the food that is eaten while the boat is being gotten ready to go out?

A. That's right, sir.

Q. Now, is there a custom as to the period for which the men who work preparing the boat——

Mr. Margolis: Well, I will withdraw that.

Q. (By Mr. Margolis): Is it customary to do this once a year or less than once a year or more than once a year, as far as fixing up the boat is concerned? [17]

A. The rule is—the custom is once a year.

Q. For boats that fish tuna only?

A. For boats that fish tuna only.

Mr. Sikes: Well, if the court please, I would appreciate it if Mr. Margolis would let him finish his answer before he suggests the next part of it—inadvertently suggests the next part.

Mr. Margolis: I think counsel is right, your Honor. I shouldn't have done that. My question

(Testimony of Anthony Vitco.)

wasn't complete, because there is a difference between the two types of boats.

Mr. Sikes: Yes.

Mr. Margolis: All right.

Q. (By Mr. Margolis): And what custom, if any, is there that you are familiar with with respect to the employment of the men, the period for which they are employed, these men who do the work getting the boat ready, on boats that fish tuna only?

A. When a skipper—when a captain would ask you if you want to go fishing for tuna, that means until the end of the season, tuna season. If it's October, November or December, whatever he stop and take his net, tuna on shore, that is end of that season. That is custom that we fishermen take.

Mr. Sikes: I am going to move that the answer be [18] stricken, your Honor, on the grounds that it is obviously a conclusion; second, that it is uncertain in that we cannot determine if it is applicable to this particular boat; and thirdly, it is incompetent because there wasn't a sufficient foundation laid. And I move that the entire answer be stricken.

The Court: Motion denied. You may cross examine the witness.

Mr. Sikes: All right, sir.

Q. (By Mr. Margolis): Was that the custom, as far as your knowledge of the industry is concerned, that was in effect in 1951 when you went to work on the Pioneer?

A. That's the custom, Mr. Margolis.

(Testimony of Anthony Vitco.)

Q. Now, did you have a conversation with anyone from the Pioneer about going to work on that boat before you went to work? Just answer that yes or no.

A. Yes, sir.

Q. With whom did you have that conversation?

A. With the owner, Mr. Joncich.

Q. And do you remember where that conversation was held?

A. That was on Fishermen's Wharf, right in front of the boat—was tied up alongside.

Q. Fishermen's Wharf in San Pedro where all the boats are tied? [19]

A. That's right.

Q. Was anybody else present at the time besides yourself and Mr. Joncich?

A. Well, no, sir. I was talking to a man but he called me on the side to talk to him.

Q. So at the time of that conversation there was just the two of you?

A. Just the two of us.

Q. Can you fix the date. I don't mean exactly.

A. I don't know. It must have been in October. I think about 15 days at least before we went to work, at least that. We fixed the net. Must have been October in '51.

Q. Now, will you tell us what was said by Mr. Joncich and what was said by you?

A. Well, Mr. Joncich, as I fished with him before on the same——

Q. You had worked with Mr. Joncich on the Pioneer before?

(Testimony of Anthony Vitco.)

A. About two years before, yes, sir. He asked me if I would want to go fishing tuna this year with him. I told him no, I didn't want to go.

Well, he says, "Where you going?"

I told him, "I might go to San Diego, fish on Normandy." Because I did fish on Normandy one trip before.

He says, "Why you want to go to San Diego? You know you can make \$10,000 with me this year. I'm going with you guys, [20] too." And talk and talk and talk, and finally I say yes and I accepted.

Q. Do you recall about when it was that you started working on the boat?

A. On the boat? Mr. Margolis, we started, if I am not mistaken, I believe in November. But I am not sure what day in November.

Q. Can you tell us, the early part, the middle part,——

A. The early part, yes, sir. As I stated, we work over a month on the boat, so it must have been November 1st or 2nd, in that line; 5th—or, I am not sure. But I know it was right start of November.

Q. All right. Now, you did the kind of work that you described, the cooking, is that right?

A. Did the same work as I did 20 years ago, all the time. I mean, work, cooking, help them on the net a little bit when I had a little time. I cleaned all my galley benches, boxes, got ready for provisions, because we usually take two months' to

(Testimony of Anthony Vitco.)

three months' provisions on those boats, for 12 men. You have to have everything ready.

Q. And you had to put the provisions away, is that right?

A. When we were ready to sail, yes, sir.

Q. From the time that you started to work about how long a period was it that you worked on the boat, getting it [21] ready, doing all these things you told us about?

A. I figured more than a month. But I know I worked more than a month.

Q. How many days a week?

A. I even came down on Sunday, every day of the week. I even came down on Sunday to work.

Q. Did you miss any time, any regular time of work during that period? Did you take any days off?

A. Not one minute, Mr. Margolis.

Q. Now, there finally came a time the boat was all ready to go, is that right?

A. Yes.

Q. What date did the boat leave?

A. We left December the 27th, I believe, in '51.

Q. Now, before you left did you sign any papers or any kind?

A. It's customary every year we sign some kind of a crew list or something. I don't know what it is. But we sign our name on a piece of paper. Every man have to sign his name there—crew member. But I don't know what it is. Every year I sign that kind of paper.

Q. As far as you remember did you sign one this trip?

A. Yes, I did.

(Testimony of Anthony Vitco.)

Q. By the way, you said it is customary to do this. Is it customary every trip you take to Mexico, or once a [22] season?

A. Once a season that I remember, sir.

Mr. Sikes: I am going to object to that answer and move that it be stricken on the grounds that it is again uncertain as to what is meant by "season." Now, I don't know whether he is talking about a month, or what he is talking about.

Mr. Margolis: Well, maybe I can straighten that out so we don't have the difficulty counsel has.

Q. (By Mr. Margolis): If you start fishing, you finish fixing up the boat and you are ready to go out and you sign before you go out.

A. Yes, sir.

Q. Now, the boat will make quite a number of trips before it's laid up again, will it not?

A. Mr. Margolis, we go season—

A. Well, Mr. Vitco, just listen to my question. My question is very simply this: When you start fishing after you fix the boat up and you are going to Mexico, the fishing is in Mexican waters, by the way, is it? A. Yes, for tuna.

Q. You are going to Mexico. You make quite a few trips, don't you, before the boat is laid up again and you go through the business of fixing up the boat again? A. Oh, yes.

Q. How long does each trip ordinarily take?

A. Well, on this particular boat, sometimes make some fast ones; month, two, 40 days, 12 days,

(Testimony of Anthony Viteo.)

15—all depends on how lucky you are, Mr. Margolis.

Q. Two months is a long trip?

A. Two months usually is a long trip.

Q. Now, when you go to work on a boat, before you go out the first time, you sign this crew list, or whatever it is?

A. That's right, sir.

Q. Now, do you sign it again until after the boat is laid up and you start all over again?

A. In all my years fishing I never remember that I signed another one until next year, until next tuna season.

Q. Until the next time the boat had been laid up and you started out again?

A. That's right, until next year.

Q. Now, how did you feel physically at the time that the boat left San Pedro on December 27, 1951?

A. Mr. Margolis, I felt like I always did—fine, capable of doing my work. I felt good, otherwise I wouldn't have went down in Mexico. Very dangerous to go down there sick.

Q. Now, did there come a time within a few days when you became sick?

A. That's right, sir. [24]

Q. Now, when was that? About how long after the boat left on December 27th?

A. Well, it wasn't too long, sir. We were on Guadalupe Island, and we left the island—

Mr. Margolis: Mr. Viteo, I think it is our recess time. We will pick it up here.

The Court: We will recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p.m. of the same day.) [25]

Wednesday, February 23, 1955; 2:00 p.m.

The Court: Are there ex parte matters?

The Clerk: No, your Honor.

Mr. Margolis: Ready, your Honor.

The Court: You may proceed.

Mr. Margolis: Your Honor, with the court's permission I shall temporarily ask that Mr. Vitco be excused from the stand, and I would like to call Dr. Abowitz.

The Court: You may.

MURRAY ABOWITZ

Called as a witness by the libelant, being first sworn, was examined and testified as follows:

The Clerk: Give us your full name.

The Witness: Murray, M-u-r-r-a-y, Abowitz, A-b-o-w-i-t-z.

Mr. Magnolis: Your Honor, before proceeding with the examination of Dr. Abowitz, I would like to offer certain exhibits to which the examination will in part pertain. And these are exhibits which are referred to in the pretrial stipulation. The foundation is stipulated to them. They are an exchange of radiograms between the Coast Guard and the vessel Pioneer, involved in this case, dated January 3rd and 5th, I believe; 3rd, 4th and 5th.

I would like to offer these as a single exhibit.

(Testimony of Murray Abowitz.)

They are fastened together. There are six radiograms. [26]

Mr. Sikes: If the court please, I have no objection to those going in, but I will not stipulate that those are all of the messages between the Pioneer and the Coast Guard.

Mr. Margolis: I do not ask for such a stipulation.

The Court: Very well. They are received in evidence as Libelant's Exhibit—

The Clerk: No. 2, your Honor.

The Court: —No. 2.

(The documents referred to were received in evidence and marked Libelant's Exhibit No. 2.)

Direct Examination

Q. (By Mr. Margolis): Dr. Abowitz, what is your address?

A. 6333 Wilshire Boulevard, Los Angeles.

Q. You are a physician and surgeon duly authorized to practice medicine and surgery in the State of California, and licensed for that purpose?

A. I am.

Q. Doctor, will you give us, briefly, your educational background?

A. I studied medicine at the University of Vienna and received my medical degree in 1937. Upon returning to this country, in California, I had a year's internship and a year's residency and went into practice, practice of internal medicine, approxi-

(Testimony of Murray Abowitz.)

mately 1942, and have practiced continuously [27] since then.

Q. What did you do in the years between 1937 and 1942, Doctor?

A. Internship and residency and a couple of years of training in X-ray to become an X-ray specialist — which I abandoned to go into internal medicine.

Q. And since 1942, Doctor, have you practiced internal medicine continuously here in the City of Los Angeles? A. I have.

Q. And in connection with that practice have you had occasion, Doctor, to treat patients who have complained, or who actually had heart trouble at one time? A. I have.

Q. Has that been a substantial part of your practice?

A. Yes, it's one of the common diseases one sees in the medical practice.

Q. Did you see and examine the libelant in this case, Anthony Vitco? A. I did.

Q. When was the first time that you saw Mr. Vitco?

A. In March 1952, I first examined him in my office.

Q. Can you be more specific as to the dates?

A. March 27, 1952.

Q. At that time did you examine Mr. Vitco?

A. I did. [28]

Q. Did your examination consist in part of the obtaining of a history? A. That's correct.

(Testimony of Murray Abowitz.)

Q. Will you tell us what history you obtained at that time, Doctor?

Mr. Sikes: I am going to object to that question, your Honor, on the grounds that—I don't know what history is coming up, of course, whether it has to do with anything that has to do with shares or anything else.

Mr. Margolis: I am talking about medical history.

Mr. Sikes: Purely medical history.

I will withdraw my objection.

Q. (By Mr. Margolis): Did you go into anything else besides medical history, Doctor?

A. I am certain I did not.

Q. In any event, confine yourself to that.

A. The patient gave a history of severe chest pain, chiefly under the breast bone, which had begun rather suddenly about January 2, 1952. He described the pain which had occurred on frequent occasions as radiating from the breast bone, up to the left shoulder, down the left arm and as far down as the left wrist. This pain was accompanied by a choking, strangulating sensation and was also accompanied by breathlessness. The pain was related almost entirely to exertion. That is, exertion would bring on the pain and with [29] rest it would subside.

He also gave me a history of having seen—this had occurred while he was working on a fishing boat as a cook in the waters off Mexico; perhaps off Lower California, I don't recall.

(Testimony of Murray Abowitz.)

In the history he gave it was stated that he had seen a physicial in Lower California about January 24th and that he had been taken off the boat and flown back to San Pedro on January 27, 1952. He had been placed under treatment by a chiropractor for about six weeks, who had then referred him to an osteopath, who had examined him and gave him some pills, little white pills, which were placed under the tongue, which relieved the pain.

Q. Do you know what those pills were, Doctor?

A. No. But a fairly good guess would be that it was nitroglycerin, which is one of the few medications that is ever given under the tongue and which relieves that type of pain.

Mr. Sikes: May I move that the answer go out as not responsive and a conclusion of the witness?

The Court: That is your opinion, Doctor?

The Witness: Yes, that is my opinion.

The Court: Of what it was?

The Witness: Yes.

The Court: Is the point of your objection that the doctor [30] isn't competent to express that opinion?

Mr. Sikes: To express an opinion of what is in a pill which has been given sometime before; that, sir. As he said, it is a guess. I believe he said that.

The Witness: That is correct.

The Court: Now, it is transformed to an opinion, is that correct, Doctor?

The Witness: Well, it is very difficult for me to say what a medication is. But there are so few

(Testimony of Murray Abowitz.)

things that are given a patient to take under the tongue, it is a rather good opinion. I might qualify it was an opinion.

The Court: Doesn't that go to the weight of it?

Mr. Sikes: All right, sir. Probably a tempest.

The Court: Very well. The motion is denied.

Q. (By Mr. Margolis): Will you proceed please, Doctor?

A. The complaints described by the patient at the time that I first saw him were chiefly the following: chest pain, which radiated upwards towards the left side of his neck, over to the left shoulder, down the left arm and to the wrist, brought on by exertion. Occasionally, the patient suffered this pain with rest, especially—excuse me, at rest, especially with nervous tension. His maximum walking ability at a slow pace was two blocks. And the pain was promptly relieved if at times only partially, by using this medication which I assume to be nitroglycerin. My future experience with [31] this patient, however, indicated that nitroglycerin did relieve the pain.

On examination, I found that he had some small rales—

Q. What are rales?

A. Rales are bubbly sounds like air bubbling through water—at the left base of his lungs; that his heart tones were distant and of poor quality. On fluoroscopic examination the heart was not enlarged and the lungs were relatively clear. And,

(Testimony of Murray Abowitz.)

also, I noted that he was a nervous, tense and apprehensive person.

Q. All right. Now, did you at that time or later take an electroencephalogram?

A. No. But I did take an electrocardiogram.

Q. Electrocardiogram. Excuse me. I have the wrong case. Electrocardiogram. Did you at that time, Doctor?

A. I did. And they showed some slight changes, which I can describe, indicative of heart damage.

Q. Do you have the electrocardiograms that you took?

A. I do. I have not only the electrocardiograms I took on that occasion, but all that I have taken subsequently over a period of two or three years.

Q. Will you hand me the first one in point of date, point of time? A. March 27, 1952.

Q. That's the electrocardiogram that you took on the [32] first occasion of Mr. Vitco visiting you, is that right? A. That is so.

Mr. Margolis: Do you wish to see it, counsel, before I offer it?

Mr. Sikes: No, not now.

Mr. Margolis: I would like to offer this as 3-A, and then we can mark the others B, C, D and so forth.

The Court: Very well. It will be received, and so marked.

(The document referred to was received in evidence and marked Libelant's Exhibit 3-A.)

(Testimony of Murray Abowitz.)

Mr. Margolis: Maybe we can go ahead with the rest of them. Just give me the dates.

The Witness: April 18, 1952.

Mr. Margolis: I offer it as 3-B.

The Court: Received in evidence.

(The document referred to was received in evidence and marked Libelant's Exhibit 3-B.)

The Witness: June 20, 1952.

Mr. Margolis: 3-C.

The Court: Received in evidence.

(The document referred to was received in evidence and marked Libelant's Exhibit 3-C.)

The Witness: August 7, 1952.

Mr. Margolis: That's 3-D. [33]

(The exhibit referred to was received in evidence and marked Libelant's Exhibit 3-D.)

The Witness: September 18, 1952.

Mr. Margolis: 3-E.

The Court: Received.

(The exhibit referred to was received in evidence and marked Libelant's Exhibit 3-E.)

The Witness: August 13, 1953.

Mr. Margolis: 3-F.

The Court: Received in evidence.

(The exhibit referred to was received in evidence and marked Libelant's Exhibit 3-F.)

The Witness: December 1, 1953.

Mr. Margolis: 3-G.

The Court: Received in evidence.

(The exhibit referred to was received in evidence and marked Libelant's Exhibit 3-G.)

(Testimony of Murray Abowitz.)

The Witness: October 12, 1954.

Mr. Margolis: 3-H.

The Court: Received in evidence.

(The exhibit referred to was received in evidence and marked Libelant's Exhibit 3-H.)

Mr. Sikes: I just want to get a couple of the dates here.

Mr. Margolis: I will wait a moment.

Mr. Sikes: Thank you. [34]

Q. (By Mr. Margolis): Now, Doctor, did you arrive at a diagnosis upon the basis of your first examination, which included the history and the electrocardiogram taken on that date?

A. I did.

Q. What was that diagnosis, Doctor?

A. That this patient was suffering from heart disease, a coronary artery disease, with insufficiency of the coronary arteries causing anginal pain. "Anginal pain" meaning heart pain. I also concluded that this had resulted from a myocardial infarction.

Q. What is that, Doctor?

A. Myocardium refers to the heart muscles. Infarction means the death of tissue. And in this case it means the death of certain isolated portions of the heart muscles. That the illness at the time that I saw him had begun early in January, or sometime during January, and the illness that he had suffered on board this fishing boat.

Q. Incidentally, Doctor, on an illness of this kind does it sometimes develop over a period of years and then manifest itself suddenly?

(Testimony of Murray Abowitz.)

A. No. An illness of this type does not develop over a period of years.

Q. Now, Doctor, I wonder if you could tell us the basis for your conclusion? In other words, can you relate [35] the findings and the history to the conclusion that you reached?

A. The most important basis for such a diagnosis is the history, which medically means a description of the symptoms, their occurrence, the sequence, relationship to external events. In this case his description of his symptoms, their occurrence, their relationship to exertion, their abeyance with rest, were classically and typically that of heart disease of the anginal type.

The electrocardiogram which was taken on the first occasion——

Am I confined in this answer to just the first occasion, the first visit?

Q. Well, Doctor, maybe I am not doing this well. Maybe it would be better——

You did arrive at this diagnosis on the basis of your first examination? A. I did.

Q. Let me withdraw that question temporarily and let me ask you whether or not you continued to see Mr. Viteo. A. I did.

Q. Can you tell me for how long a period of time and how regularly you saw him?

A. During the first year I saw him at intervals of several weeks; occasionally at intervals of one month. I [36] continued to see him at gradually increasing intervals until the fall of 1954.

(Testimony of Murray Abowitz.)

Q. When was the last time that you saw him?

A. The last time I saw Mr. Vitco in my office was October 12, 1954.

Q. Now, during those visits did you give treatment to Mr. Vitco?

A. I did. I treated him. I examined him frequently. Repeatedly took electrocardiograms and talked to him on numerous occasions.

Q. Now then, Doctor, did your subsequent examinations and your subsequent treatment confirm your original diagnosis?

A. It confirmed it and strengthened it.

Q. Now, Doctor, without confining yourself then to the first visit but covering the entire period of your treatment and of your observation of this man, will you give us the basis for the conclusion that you reached.

A. As I said, and without repeating——

Q. Yes, don't repeat.

A. ——the history, the description and the relationships, was one of the main bases for the diagnosis. The electrocardiogram on the first occasion, but even more so on subsequent occasions, confirmed that diagnosis and helped me reach that diagnosis.

Q. I wonder if you would take these E.K.G's., which [37] are in evidence as 3-A to 3-H, inclusive, and point out what there is in the E.K.G's. that tend to confirm your diagnosis? Incidentally, each time that you refer to an exhibit will you indicate which one it is that you are referring to?

(Testimony of Murray Abowitz.)

A. Exhibit 3-A.

Mr. Margolis: Now, your Honor—would you put it up there where your Honor can see it?

Mr. Sikes: May I come over?

The Court: Yes. Just hold it flat, or where you all can see it.

The Witness: In Lead 3 there is a depression of the S-T Segment.

Mr. Margolis: I wonder, would you want me to go into an explanation of what the S-T Segment is, your Honor?

The Court: If you care to.

Q. (By Mr. Margolis): Before we go into that it might be well for you to tell us what segments an electrocardiogram consists, and what they mean?

A. The complex of waves which make up one heart beat and we can take this as an example (indicating)—

The Court: Drawing a circle around Lead 2 on page 1, is it?

Mr. Margolis: Of 3-A.

The Court: Exhibit 3-A.

The Witness: A P-wave which represents the contraction [38] of the auricle.

Q. (By Mr. Margolis): Would you point what the P-wave is? That's the first wave? That's the first wave, the smallest of the waves there? It looks like an inverted V?

(Witness complies.)

The Witness: The R wave, which is this upright thin wave which represents the contraction of the

(Testimony of Murray Abowitz.)

ventricle and the T wave which represents the relaxation, let us say, of the heart beat.

On some other Leads there are some waves. For instance, in this Lead——

Q. (By Mr. Margolis): Pointing to Lead——

A. Lead V₃.

Q. ——V₃.

A. The wave—the downward wave that follows the R wave is called the S wave. If there is a downward wave preceding the R wave it is termed Q wave. Therefore, in this Lead, unfortunately, there is no, or a very small S wave.

The Court: Lead 2?

The Witness: In Lead 2. But the segment between the R and S waves and the T wave is known as the S-T Segment. That is this flat part that repeatedly shows up on all tracings.

Q. (By Mr. Margolis): Doctor, this is in effect a [39] reproduction of the manner in which the heart is functioning, and there are certain—there's a certain design that would be drawn if the heart were functioning normally, and variations from that indicate something wrong; is that right?

A. That is correct.

Q. Now, is there anything in this E.K.G., Exhibit 3-A, which indicated any such variations from the normal?

A. In Lead 3 of this tracing the S T Segment, this little segment here from this small S to this T, is depressed. In other words, it is below the base line. If this is taken as the base line, it is apparent

(Testimony of Murray Abowitz.)

that this little segment is below this base line; as it is here; as it is here; (indicating)——

Q. In other words, that's the straight line, between the S and the T wave, is depressed below the straight line between the other waves, is that correct? A. That is correct.

Q. What is normal, Doctor?

A. It should be on the same level.

Q. And does this depression repeat itself, Doctor? A. It does.

Q. Will you indicate how many times?

A. In all those four complexes up to here.

Q. Now, I notice that about halfway across that Lead 3 there is a line that has been drawn there. What does that [40] indicate?

A. It is at this point that the technician in taking the tracing asked the patient to take a deep breath and hold it; and then he proceeds with the tracing, which sometimes give us information of value.

Q. And in this case in which part of the E.K.G. do you find the information that helped you in your diagnosis, in the part before he took the deep breath, or afterwards? A. Before.

Q. I see.

A. Further in this tracing it is obvious that the T wave is not upright as it is here (indicating)——

The Court: Lead 2?

The Witness: ——as it is here in Lead 2. Nor is it downward as it is in some other Leads. But it is both up and down. The first part is down and

(Testimony of Murray Abowitz.)

the second part of the T wave in Lead 3 is up. It is therefore called a diphasic T wave. That also is indicative of heart disease.

And in this tracing 3-A, the other significant point is in Lead AVL.

Mr. Margolis: Let the record show that the doctor has circled that for convenience—AVL.

The Witness: That the S-T Segment, the same segment that we described in Lead 3 is elevated above the base line. Here is the base line (indicating). Here is the S-T Segment. [41] That is obviously above it. Here is the base line. Here is the S-T Segment. Here is the base line (indicating). That, too, is indicative of heart disease.

Q. (By Mr. Margolis): Now, Doctor, would you say that from that E.K.G. alone that a conclusive diagnosis of heart disease could be made?

A. No.

Q. What would you say that this shows?

A. It gives us ground to suspect the presence of heart disease.

Q. Now, Doctor, is there anything in the other E.K.G.'s. that is different from—well, first of all, let me leave it entirely to you. Will you go through the other E.K.G.'s. and indicate what else helped you in your diagnosis?

The Court: Do you wish the doctor to indicate the Lead and mark any illustrated markings thereon that he wishes?

Mr. Margolis: If you wish to do so, Doctor, will you do that; but indicate in each case if you make

(Testimony of Murray Abowitz.)

such a marking, indicate which exhibit you are referring to.

The Witness: The next tracings, that is 3-B and -C, were essentially the same.

Q. (By Mr. Margolis): As 3-A?

A. As 3-A. Coming to the tracing in August of '52, Exhibit 3-D, we find that the previously described diphasic [42] T-wave is now upright. The amount of S-T depression has lessened; although there are still some depressions, it is less.

Q. What is the significance of those changes, Doctor, in your opinion?

A. It confirms the significance of the changes originally demonstrated in the tracings and rules out the constantly present suspicion that minor changes are of no significance. Very frequently we see slight changes from the normal in an electrocardiogram, and it is only on the basis of so-called serial tracings that one can confirm or rule out the existence of disease. If those changes originally demonstrated in Exhibit 3-A remain constant, they would still be grounds for suspicion; but the fact that it changes, and as you will see later changes again and again, indicates a changing condition, indicating a disease condition rather than a normal variation—that is, a usual variation from the normal.

Q. In other words, Doctor, any one of us may have a slight variation from the normal, but that will remain consistent?

A. That is true.

(Testimony of Murray Abowitz.)

Q. And where you see variations in the variation, that confirms heart disease?

A. That is true. [43]

In Exhibit 3-E, a tracing taken on September 18, 1952, the S-T Segment in Lead 3 which was previously depressed is now isoelectric.

Q. What does that mean?

A. Meaning it is on the same level with the base line.

Q. In other words, we found the situation where that segment was considerably below the base line, then came up a little higher, and now has come up level, is that right?

A. That is correct. And the T wave in the same Lead which was originally diphasic and then showed a tendency to come upward is now even more upright.

Q. Is there anything else in that exhibit, Doctor?

A. The T-wave in the AVL Lead is lower than on any previous tracing.

Q. Is that of any particular significance, Doctor?

A. That, I think, will come out in the further tracings, where this is merely a tendency. As you can see, these are only tendencies which only when they arrive at the thing which is done are of significance. Because in the next tracing, Exhibit 3-F—

Q. What date?

A. August 13, 1953, there is a significant change

(Testimony of Murray Abowitz.)

in the AVL Lead, that the T wave is now actually inverted and the S-T Segment in that Lead is elevated. In this same——

Q. Is that the same Segment that was previously [44] depressed, the S-T Segment?

A. No, sir, that was in a different lead that you are referring to. But that S-T Segment that you are referring to again shows the tendency to become slightly depressed after having returned to the base line.

Q. That's in Lead 3? A. Lead 3.

Q. I see.

A. And in Exhibit 3-G, the tracing of December 1, 1953, there is again the depression of the S-T Segment; and the T wave in AVL is upright, in other words normal, which would strengthen the suspicion that the previously described T wave in that Lead was of significance. But then that same T wave again becomes flat in a tracing of October 12, 1954, Exhibit 3-H, indicating a change in pattern, and indicating quite reliably the presence of heart disease.

Q. Then it is from the sum total of these E.K.G.'s. rather than from any single one that you draw your diagnosis, is that correct?

A. That is correct.

Q. And any single one by itself might not necessarily lead to that conclusion.

A. It would be very difficult to make a diagnosis on any single one.

Q. All right. Now, Doctor, what else, if any-

(Testimony of Murray Abowitz.)

thing, [45] led you to the conclusion that Mr. Vitco was suffering from this type of heart disease?

A. The course that he followed during the several years that I treated him. For instance, on various occasions he developed—on various occasions the rales which were heard at the left base of the lungs would disappear when given an injection of a diuretic.

Q. Could you explain the significance of that, Doctor?

A. Well, that would confirm the fact that these rales at the left base were due to heart weakness and that they cleared up with this injection.

Q. What is it that the injection does, Doctor?

A. The injection forces the kidneys to excrete more of the body fluid.

Q. And is it the heart weakness or inadequacy which lessens the flow of that fluid and therefore accounts for the rales? A. That is correct.

Q. All right. What else, if anything, Doctor?

A. The repeated and constant relief that he obtained from using nitroglycerin under his tongue. The relationship of the occurrence of pain to exertion. The——

Q. Well, let's stop for a moment on nitroglycerin. Is that typical of heart trouble, that nitroglycerin will give relief from pain? [46]

A. Not all heart trouble, but heart trouble of the anginal type classically and typically will be relieved by nitroglycerin. It is so typical that it is even to some extent a diagnostic point. At times

(Testimony of Murray Abowitz.)

when one isn't sure one is dealing with a heart disease, one can use a trial of nitroglycerin to confirm that fact.

Q. Go ahead. You started to talk about exertion, Doctor.

A. Well, the repeated relationship as described by the patient over a period of years of the pain occurring with exertion, or with aggravation, relieved with rest, confirmed in my mind the diagnosis: the localization and radiation of the pain upward under the sternum into the neck, on some occasions into the jaws, but then over toward the left into the shoulder and left arm—that is also very typical of heart disease.

On a few occasions he described blackout spells with exertion, fainting spells, which I attributed to the weakness of his heart and the inability of his heart to keep up with the demands that he would on occasion make.

Q. In other words, the fainting spells would be caused by a shortage of the blood supply, would it not, Doctor? A. That is correct.

Q. And that is caused by the ineffective functioning of the heart? [47] A. That is correct.

Q. You have completed your answer, Doctor?

A. Yes, sir.

Mr. Margolis: So your Honor will understand what I am doing, I intend to refer to certain portions of the telegrams which went from the boat.

The Court: They are in evidence?

Mr. Margolis: They are in evidence, your Honor.

(Testimony of Murray Abowitz.)

The Court: Libelant's Exhibit 2?

Mr. Margolis: Yes, your Honor.

The Court: May I see those?

(Whereupon the exhibits were handed to the court.)

The Court: What does nitroglycerin do? What effect does it have?

The Witness: It dilates the coronary arteries, thereby increasing the amount of blood that can reach the injured heart muscle.

The Court: Lessens the resistance to flow, is that correct?

The Witness: That is correct.

Q. (By Mr. Margolis): Is this the sort of heart disease that is caused by an occlusion or stoppage of the flow of blood?

A. A diminished supply of blood to the heart muscle.

Q. This opens up the area through which the blood can flow? [48]

A. That is right. And if there is an insufficient amount of blood reaching any part of the heart muscle that is immediately manifested as pain. That is nature's signal to the individual to stop or slow down whatever he is doing, if possible. Nitroglycerin dilates the arteries, and more blood gets through that heart muscle and the pain is relieved.

Q. Now, Doctor, I direct your attention to the fact that it was reported on January 3rd that about four days before that Mr. Vitco had noted a slight tickling at his throat.

(Testimony of Murray Abowitz.)

Mr. Margolis: That is spelled t-h-r-o-u-a-t, but I think we can take that for "throat," your Honor.

Q. (By Mr. Margolis): In your opinion, Doctor, would that sort of a symptom have any relationship to a heart condition?

A. A tickling in the throat?

Q. Yes. A. No, sir.

Q. Then it goes on and says, "And the last two days has developed into slight strangulation affect." Would the "slight strangulation affect" have any relationship to his heart condition?

A. The term "strangulating" is very typical, entirely typical of heart disease. [49]

Q. Now, in that connection, Doctor, there has been a diagnosis made of pharyngo—esophagitis, is that it?

Mr. Sikes: Your guess is as good as mine. I believe the first word is pharyngal, and the other is, however you pronounce it, esophagitis.

Q. (By Mr. Margolis): How do you pronounce it? A. Pharyngo-esophagitis.

Q. What is pharyngo-esophagitis?

A. Pharyngo-esophagitis is the inflammation of the pharynx and esophagus. The pharynx is the upper part of the gullet, the part one sees when one looks into another person's mouth, the back part of the mouth. What you are actually looking at is called the throat, as in a sore throat, is the pharynx. This extends downward for a few inches and its continuation is called the esophagus, which extends down into the stomach.

(Testimony of Murray Abowitz.)

Q. And that term merely means an inflammation of that area? A. That is correct.

Q. Now, would a tickling of the throat be a symptom of that sort of an incapacity or disease?

A. No, sir, I have never heard of that.

Q. Would a strangulation effect be in any way typical or have any relationship to this disease we are talking about. I am not talking about the heart disease, I am—— [50]

A. The pharyngo-esophagitis?

Q. Yes.

A. No, sir. I don't think that inflammation of the pharynx or the esophagitis could possibly be described as strangulating.

Q. Now, what are the typical symptoms of that?

A. Well, the typical symptoms of pharyngo-esophagitis would be pain with swallowing, burning pain, acidy type distress, a feeling of a lump in the gullet; and would be solely and entirely related to the process of swallowing. I doubt that there would be any symptoms at all if the patient were not swallowing.

Q. And would the kind of food from the standpoint of whether it was highly seasoned or sharp or alcoholic in content make any difference?

A. The answer is certainly it would. It would be like pouring acid on an open wound. Any spicy food or alcoholic beverages would be very painful. On the other hand, the patient would describe milk and bland foods or ice cream as being much easier to swallow, or not painful at all.

(Testimony of Murray Abowitz.)

Q. Now, there is also a report that Mr. Vitco at that time had a temperature. Is there any relationship between a temperature and the kind of a **heart attack** in your opinion Mr. Vitco had?

A. Yes, very classically and typically there [51] is a fever during the first several days or first week of the onset of such an attack.

Q. And does that fever remain constant or go up and down?

A. It goes up and down during the first week or so.

Q. Incidentally, there is also a statement that the strangulation effect seemed slight. When there is a heart attack of this kind does the severity of the condition vary from time to time?

A. Certainly it can, and does, usually.

Q. Now, there is also an indication that later on the strangulation effect became worse. Would this process of it getting better and then getting worse also be typical of a heart disease?

A. That is true.

Q. Would it have anything to do with this inflammation of the gullet of the throat?

A. The strangulating effect?

Q. Yes.

A. I can't imagine that it does.

Mr. Margolis: Now, I am referring to the third telegram, your Honor.

Q. (By Mr. Margolis): Doctor, ordinarily the pulse rate and respiration goes up during a heart attack, does it? A. That's correct. [52]

(Testimony of Murray Abowitz.)

Q. Now, there is a report, "Patient now sleeping" and "pulse rate 69" and "respiratory rate 18 breaths." That's approximately normal?

A. That's correct.

Q. After a heart attack and when a patient is sleeping, does the increase of pulse rate subside and the respiratory rate subside?

A. Regardless of what the rate of the heart and breathing is, it will always slow down during sleeping.

Q. So that—

A. I won't necessarily say that it would always slow down to normal, but regardless of where it is when the patient is awake and suffering from symptoms of pain, it will always slow down with sleeping.

Q. Now, it says here "Breath short since and during attacks but now that patient is in bed and has been given penicillin breath seems free when not during attacks."

Will you tell us what, if any, this relationship, this sort of a symptom has either to the gullet condition, which I will call it for short, or the heart condition?

A. I cannot at all conceive that there would be shortness of breath related to any inflammation of the gullet. But shortness of breath of course is a typical symptom that accompanies heart pain. And, typically, the heart pain lasts for a certain period of time, during which the patient [53] is very

(Testimony of Murray Abowitz.)

breathless, and then subsides, when the pain subsides the rapid breathing subsides.

Q. The breathing becomes free, is that correct?

A. That's correct.

Q. And then if there is another attack there is a repetition of shortness of breath, is that correct?

A. That's right.

Q. Now, here it says that the face is pale. Would that have any relationship to any of the two conditions we are talking about?

A. It certainly would not be related to any disease process of the gullet. But it certainly would be typically related to a heart disease such as we have discussed.

Mr. Margolis: Now, I am referring to the next to the last of these radiograms, your Honor. The reason that it is every other one is that the ones in between are the reply messages.

Q. (By Mr. Margolis): Now, the report is, "No swelling in ankles." Is that indicative one way or the other with respect to either of these two conditions?

A. Swelling of the ankles does not occur with this type of heart disease, in the acute phase.

Q. And it wouldn't occur for the pharyngeal condition, either, would it, Doctor?

A. No, it would not. [54]

Q. Now, "Position of ailment is from Adam's apple to shoulder blade in windpipe." It is a little confusing. I don't know of any shoulder blade in

(Testimony of Murray Abowitz.)

the windpipe. But apparently it had something to do with shoulder blade.

Anyway, what is that typical of, Doctor? Pain which runs over to the shoulder blade?

A. As I stated previously, it's classically typical of the radiation of anginal pain.

Q. Would it have anything to do with the other type of a condition, Doctor? A. No, sir.

Q. Then there is again "Difficulty in breathing with a feeling of strangulation." You have told us about that.

Then it says here, "Had cold chills with perspiration."

Would that be related to either or both of these conditions?

A. That could be a symptom of both conditions.

Q. Now, it says here, "After penicillin injection pains and strangulation eliminated leaving only a feeling that something lodged in windpipe X is awfully hard for him to swallow."

Can you explain what relationship these symptoms, if any, would have to either of the two conditions we are talking about?

A. It's very difficult for me to conceive that an injection [55] of penicillin would relieve heart pain, except that perhaps as a result of the situation created. I can imagine, well, that a man suffering great pain is given an injection by the Captain or a physician and assured, reassured, told to lie down and rest and that this will help him, that that mere reassurance and rest and relaxation would of course

(Testimony of Murray Abowitz.)

cause a diminishment of the heart pain. The penicillin itself could not.

If the condition that the patient suffered from was a pharyngo-esophagitis and he was given a shot of penicillin, the penicillin might relieve the pharyngitis. It certainly would not have any effect whatsoever on the esophagitis. Any relief, however, obtained from penicillin in an infectious and inflammatory process would require several to many hours before any effect of relief were obtained.

Q. In other words, Doctor, would it be fair to say that if immediately following an injection of penicillin there was relief, the relief could not be attributed to the penicillin?

A. Except in a suggested sense. It frequently does.

Q. Now, there is a statement here that after the strangulation was eliminated it left a feeling that something was lodged in the windpipe and that it was awfully hard for him to swallow.

What relationship would that have to either of the two [56] ailments we are talking about?

A. That would not be a symptom of heart disease, but might be a symptom of pharyngo-esophagitis; or might be just a manifestation of general tension and apprehension of a nervous state. This sort of difficulty swallowing is extremely common in any condition of tension or nervousness, and I would think most people have at one time or another in a state of aggravation or a state of apprehension found difficulty swallowing and find that food will stick in their gullet if they are eating

(Testimony of Murray Abowitz.)
hurriedly during a period of tension. Very typically, such heart attacks and anginal pain are accompanied by a great sense of apprehension. As a matter of fact, it has been historically described as a fear of impending death, and patients who suffer from anginal pain will experience that apprehension even though they may experience such attacks thousands and thousands of times they always have that great fear of impending doom, as the actual classical expression. And it is not at all uncommon for patients to suffer various manifestations of nervous tension, which of course as you can see cannot be directly attributable to the pathological process in the heart, but as an indirect result thereof.

Q. Doctor, during the time that you were treating Mr. Vitco did he make any similar complaints to you with respect to difficulty of swallowing or pain in the gullet?

A. Yes, he did. On a few occasions he described difficulty [57] swallowing or the feeling of food or a lump in his throat or his gullet.

In my experience with him he always related this to a period of nervous tension and it was unrelated to food type. He was able to drink a little wine or whiskey without—

Q. Did you prescribe that he should take a little wine or whiskey on occasions, Doctor?

A. I frequently suggest that to patients with this type of heart disease, because alcohol is a very relaxing—has a very relaxing effect on people. In this case I don't recall whether I prescribed it. But I used the question of whether he could drink wine

(Testimony of Murray Abowitz.)

or whiskey as a test. If it were an esophagitis, inflammation of the esophagus or an ulcer, the response of the patient would always be that wine or whiskey caused an increased amount of pain and burning. If, on the other hand, it was due to the common manifestation of nervousness and tension then the response would be that wine or whiskey did not make it any worse, but on the other hand makes it feel better.

Q. So what was your conclusion with respect to this condition that he complained of of having difficulty swallowing in the gullet, and so forth?

A. That it was due to——

Mr. Sikes: If the court please, I believe that some foundation should be set as to when it was made. [58]

Mr. Margolis: Oh, yes.

Q. When were these complaints made, Doctor?

A. Particularly during the first six months of my care of this patient. He complained of occasional pain with swallowing. In May of 1952 I had performed an X-ray of the esophagus and the stomach because of these complaints, performed by an X-ray.

Q. You started examining him in March? You first saw him in March, and in May you had this done.

A. Yes. And because of these complaints I began to worry in my mind, perhaps there was some disorder of the esophagus or stomach that was either accompanying the heart disease or perhaps

(Testimony of Murray Abowitz.)

causing the symptoms, and the X-ray examination showed no inflammation or ulcer. It did, however, show some spasm of the esophagus.

Q. Tell us then what your conclusion was with respect to the cause of this condition and what relationship the finding of spasm had to that conclusion.

A. This confirmed the suspicion that I had that the pain he had with swallowing was related purely to nervous tension and was not caused by any pathological process in the upper digestive tract.

Q. Now, Doctor, can you tell us briefly what kind of treatment you gave Mr. Vitco from March 27, 1952—I think you said—until October 12, 1953?

A. The treatment consisted mainly of rest, the avoidance of exertion, to maintain his physical exertion below that point at which he had pain, nitroglycerin for the relief of pain and a variety of sedatives to combat this tension and apprehension; a reducing diet, which is always advisable in the treatment of any kind of a heart disease.

Q. Now, Doctor, did Mr. Vitco's condition improve under your care?

A. Very slowly and gradually it improved to a moderate degree.

Q. In your opinion does Mr. Vitco still suffer from a heart ailment? A. Yes, sir, he does.

Q. Is that a permanent condition?

A. It is.

Q. Now, at what point, in your opinion, did he achieve the maximum improvement that you could

(Testimony of Murray Abowitz.)

give him, and did his condition become permanent or more or less static?

A. I would estimate, roughly, that his condition stabilized and he achieved a maximum improvement in the late summer or early fall of 1954.

Q. Is it possible, Doctor, to set a date when this sort of thing happens, or is that just not possible?

A. It's very difficult. I would say approximately August of 1954. [60]

Q. And did it take a while after August 1954 for you to confirm the fact that about that time his condition had become static?

A. Yes. On two subsequent visits it seemed to me his condition had stabilized itself.

The Court: That is this past August?

The Witness: Yes, sir, 1954.

Q. (By Mr. Margolis): And by the time of his last visit on October 12, 1954, had you concluded that his condition had stabilized?

A. Yes, sir.

Q. Now, did you at one point at my request call in a doctor as a consultant? A. I did.

Q. And you consulted with him with respect to this condition, is that correct? A. Yes, sir.

Q. Who did you call in?

A. Dr. Joseph Hittelman.

Q. Is he a specialist?

A. In internal medicine and heart disease.

Q. And as a result of that consultation what was the effect had upon your conclusion?

(Testimony of Murray Abowitz.)

Mr. Sikes: I am going to object to that on the grounds that whatever this other doctor may have told him is, as far [61] this action is concerned, hearsay and I am deprived of the right to cross examine him. We don't know——

Mr. Margolis: Well, I will withdraw the question.

Mr. Sikes: Excuse me.

Mr. Margolis: I will withdraw the question. I may produce Dr. Hittelman. As a matter of fact, I have him ready to be here tomorrow morning.

I just have a couple more questions and then I am through with my direct examination.

Q. (By Mr. Margolis): Dr. Abowitz, was Mr. Vitco first sent to you by Mr. Robert Katz of my office? A. That's correct.

Q. And did Mr. Robert Katz ask you to send him copies of bills from time to time?

A. I think so.

Q. I show you a bill which is addressed to Robert Katz, Attorney, at 112 West Ninth Street, Los Angeles 15, for Mr. Anthony Vitco, showing professional services, with the last date 10/12/54, totaling \$348. Is that the bill for your services, Doctor? A. Yes, sir.

Q. Were the charges that you made for the service that you rendered the standard and reasonable charges for those services? A. I think so.

Mr. Margolis: I will offer the bill in evidence as Libelant's next in order.

The Court: Does that cover your charges only

(Testimony of Murray Abowitz.)

up to the point where the patient had achieved the maximum possible recovery?

The Witness: I think the statement will show there are two subsequent visits.

Q. (By Mr. Margolis): Were those visits, Doctor, visits which were necessary for you to reach a conclusion that he had previously reached the maximum state of recovery? A. I think so.

The Court: Well, the document is received in evidence as Libelant's Exhibit—

The Clerk: No. 4, your Honor.

The Court: —No. 4.

(The exhibit referred to was received in evidence and marked Libelant's Exhibit No. 4.)

Mr. Margolis: That completes the direct examination, your Honor.

Mr. Sikes: I assume, your Honor, that you would at this time ordinarily have your mid-afternoon recess. So that is why I wonder if I may inquire of the doctor to see all his records. I could be looking them over at this time.

Mr. Margolis: They are available here.

Mr. Sikes: I would like to look them over before the [63] cross examination.

The Court: Very well. Perhaps you gentlemen can do that during the recess.

Mr. Sikes: Yes.

The Court: We will recess for 10 minutes.

(Short recess taken.)

(Testimony of Murray Abowitz.)

Cross Examination

Q. (By Mr. Sikes): Dr. Abowitz, so that we may set a little foundation here, you have described Mr. Vitco's heart condition generally. Is it your opinion that he had a coronary thrombosis on the vessel? I would like to know that first.

A. Well, when you talk of coronary thrombosis you are talking of the cause of the condition. Whereas, when you talk of myocardial infarction you are talking of the actual damage that occurs to the heart. There are various ways in which a myocardial infarction can occur. One of these is coronary thrombosis.

Q. In other words, that, as I understand it, is where the artery, the accumulation of calcium in there makes the artery smaller which leads to, you might call it, a coronary sclerosis, and eventually part of that breaks off and then it becomes a thrombosis.

A. Well, a thrombosis actually implies a clotting of blood within an artery. And when you discuss the calcification, [64] I think you are talking more in terms of a narrowing of the artery which can lead to a thrombosis. The significant point is, however, whether occlusion takes place or not. It can take place through thrombosis or through other means. Or whether narrowing is present.

Q. Well, what is your opinion as to actually what happened to his heart on the vessel?

A. I had no definite opinion on that because I

(Testimony of Murray Abowitz.)

don't think it can be established without an actual examination of the vessels themselves.

Q. You mean the heart vessels?

A. The heart vessels.

Q. These nitrites and nitroglycerin, those are not a curative in any way, but simply a pain reliever, aren't they?

A. Well, it's neither a cure nor a pain reliever. Actually it relieves the pain by virtue of dilating the artery.

Q. That is what I had in mind, was that it opened so that the blood could go through, is that correct?

A. That's correct. But a pain reliever is a drug which kills pain, like codeine or morphine.

Q. Well, I had simply in mind opening it up.

A. In that sense it relieves the pain.

Q. Now, I believe you said that you based part of your opinion as to this heart trouble on the fact that when you [65] began to see Mr. Vitco he occasionally suffered from dizziness, or told you he had been suffering from dizzy spells, is that right, sir?

A. He did tell me he had had dizzy spells, but I hadn't based my diagnosis of heart disease on that.

Q. By the way, did he ever tell you he had had these dizzy spells before he was ever on the vessel?

A. Yes, he told me he had had it on and off for 10 years, if I recall correctly.

Q. Now, is the function of penicillin to combat infection?

A. Yes, sir.

(Testimony of Murray Abowitz.)

Q. And this type of—we call it inflammation of the gullet—would you call that an infection?

A. Not usually.

Q. Would you say that penicillin would have any effect on this inflammation of the gullet?

A. Not on the inflammation of the gullet, but it might on an inflammation or infection of the pharynx, which is the upper part, and which is commonly described as a sore throat.

Q. I am going to be forced into saying it, then. Pharyngo-esophagitis, is that it?

A. That is correct.

Q. That then would be affected favorably under most conditions by injections of penicillin, is that right? [66]

A. Only if it were caused by an infection. But the commonest cause by far of esophagitis is reflux flow of acid from the stomach up into the esophagus, which then irritates the membranes because the membranes of the esophagus do not tolerate the acid as the stomach does.

Q. Well, assuming that a patient did have this pharyngo-esophagitis and he was given penicillin on January the 3rd, would the penicillin have any effect by January the 5th or the 6th on any infection that was present in him? A. It would.

Q. I note from these Coast Guard messages, Exhibit 2, that on January the 5th, the message from the vessel reads:

“Two shots of penicillin 300,000 units each last shot 13 hours ago and temperature receded.”

(Testimony of Murray Abowitz.)

Would you believe that it could have had an effect on Mr. Viteo for infection in a period of 13 hours?

A. If his fever was due to an infectious process, I think in about 13 hours penicillin would begin to relieve it.

Q. And I assume that a temperature is of course consistent with infection, isn't it?

A. Of course it is.

Q. Of course it is. And if his temperature dropped after having received the penicillin, would it be your opinion, Doctor, that it was probable that he was suffering from some type of infection? [67]

A. Not necessarily, because the temperature curve of most conditions, whether it is due to a heart attack or due to infection, have the classical picture of a rising and falling fever, rising in the afternoon and evening and dropping during the night and forenoon. With very rare exceptions this occurs with all fever curves. The classical exception is typhoid fever which is a high plateau maintained fever day and night.

Q. I understand that you state that the strangulation effect in the throat is, I believe you said, inconsistent with this pharyngo-esophagitis.

A. Yes, sir.

Q. Now, assuming the strangulation effects disappear, after having been given shots of penicillin for the two preceding days, do you believe that the strangulation effect, the sensation could have been caused from some infection? A. No, sir.

(Testimony of Murray Abowitz.)

Q. Penicillin, as I understand it, would have no effect one way or the other on a heart condition, is that right? A. That's correct.

Q. And it is your belief that after having had penicillin injected over a period of a couple of days that a patient with this strangulation effect, the strangulation effect disappears, would you still say that the strangulation could not have been due to some type of infection? [68]

A. That's correct, for this reason, if I may expand a bit: That there is not this simple relationship of cause and effect. The treatment and response of a patient is a very complicated matter. If a patient feels better on one day it is not reasonably logic to assume that what everyone did on a preceding day deserves credit for his improvement. Sometimes a patient improves despite whatever is done for him, and sometimes he improves just by virtue of bed rest and relaxation.

Q. For how long a period would the patient remain pale with regard to this type of heart attack?

A. During the time that he was suffering from frequent attacks of pain and shortness of breath.

Q. Does the patient usually complain in this type of heart trouble of something lodged in his throat?

A. That is not a typical complaint of a heart attack.

Q. Is it a typical complaint of a heart attack that he is unable, or it is very difficult for him to swallow?

(Testimony of Murray Abowitz.)

A. That is a common misinterpretation on the part of the patient and family, to interpret a heart attack of this type as due to indigestion, and it is an actual frequent accompanying symptom to have difficulty swallowing.

The commonest interpretation, by the way, of the public is often eight out of nine times, when persons first experience a heart attack, is to confuse it with indigestion, [69] and eight out of nine or nine out of 10 times they will themselves diagnose it as acute indigestion until the correct diagnosis is established.

Q. I am not sure that I did get an answer there. A. I am sorry.

Q. What I was after was if the patient does in fact find himself unable to or have difficulty in swallowing, does that, is that usually one of the symptoms of this heart disease? A. No, sir.

Q. And you state that quite often a patient's— is it sort of an imagination of things they have, is that correct, which you meant, these symptoms, in the nature of possibly being even a hypochondriac, that they seem to feel things that aren't there? Is that what you meant?

A. No. I was referring to the mistake in diagnosis that the lay public most commonly makes when they experience the chest pain that accompanies a heart attack. It is their interpretation, not their imagination. Everybody of course when he has a pain attempts to interpret it and that is, of course, diagnosis.

Testimony of Murray Abowitz.)

Q. That would also apply to strangulation, is that correct?

A. Yes, sir. I beg your pardon. Strangulation is not a diagnosis. Strangulation is a symptom which is experienced [70] by the patient and which is not open to misinterpretation. The patient—strangulation means that the patient is choking, he can't breathe. This is something there can be no mistake about. That is not a diagnostic term.

Q. That is, if a doctor states it is strangulation, we assume, but not a lay person himself. In other words, aren't the two in the same category, where a person says it is difficult for him to swallow and that he has a feeling of strangulation. Either or both of those may be correct or may be incorrect, isn't that true?

A. Well, neither are terms of diagnostic. Both are terms of descriptions of symptoms, which, of course, the doctor gets from the patient. It's a subjective sensation in both cases and the doctor gets it from the patient.

Q. And you would classify them generally as equal in the sense of symptoms, is that correct?

A. They are both symptoms, but I don't know what sense you mean they are equal.

Q. Well, I will continue on.

You stated, I believe, that you thought this heart trouble began in January 1952, is that correct?

A. That is so.

Q. And upon what did you base that? Outside of this history, I mean.

(Testimony of Murray Abowitz.)

A. Almost entirely on the basis of the history.

Q. This pharyngo-esophagitis could be, could it not, generally from the Adam's apple to the shoulder blade in the windpipe? That, incidentally, is the term used in the Coast Guard message. That could be the area of that, could it not?

A. Not the shoulder blade.

Q. Well, I meant in the windpipe, from the Adam's apple down to an equivalent height in the shoulder blade.

Say, this is subject to several interpretations.

A. Interpreted that way, that could be a symptom of esophagitis.

Q. If the pharyngo-esophagitis is caused by some infection and that is the principal cause of it and penicillin and chloromycetin are applied, that treatment will and can clear that situation up within a matter of a month or two months, can it not? A. Yes, sir.

Q. I was checking over your notes, Doctor, at the recess there, and it appeared to me that you did not see——

Mr. Sikes: I will give these to him, your Honor.

(Whereupon the documents were handed to the witness.)

Q. (By Mr. Sikes): ——it appears to me that you did not see the patient, Mr. Vitco, from October 27, 1953 until December 1, 1953. Is that correct, sir?

You can look at them if you wish. [72]

A. Would you repeat those dates, please?

(Testimony of Murray Abowitz.)

A. October 27th of 1953 until December 1st of 1953.

A. That's correct.

Q. And then—incidentally, what did you prescribe for him on December 1, 1953, if anything?

A. Phenobarbital and peritrate, p-e-r-i-t-r-a-t-e.

Q. Now, drawing your attention to the next dates, did you see Mr. Vitco for a period of almost 10 months between December 1, 1953—oh, I beg your pardon.

You saw him on September 3, 1954, did you not?

A. September 3, 1954, I did.

Q. When had you last previously seen him?

A. December 1, 1953.

Q. Then there was a period of some 10 months in there which you didn't see him, is that correct?

A. That is correct.

Mr. Sikes: Your Honor, Mr. Margolis and I have discussed the United States Public Health electrocardiogram which I understand was taken in March 1952, and Mr. Margolis I believe has it, a photostatic copy of it.

Mr. Margolis: I can't find it. I have a photostatic copy, and when they brought the records, your Honor, they apparently did not bring it.

Mr. Sikes: Well, that is all right.

Q. (By Mr. Sikes): I will ask you this, Doctor: Do [73] you recall ever having seen, observed or examined an electrocardiogram of Mr. Vitco taken on March 7, 1952, at the United States Public Health Service? That was before you first saw

(Testimony of Murray Abowitz.)

him. I wonder if you ever recall that in your mind?

A. I do not recall.

Q. Did Mr. Vitco tell you that he had been suffering from some throat trouble when he went on the vessel, on the Pioneer on this trip?

A. I have a hazy recollection of a possibility that he had a cold or cough a few months before that during the period of preparation for going to sea, but I am not very clear on that.

Q. Doctor, in one of these messages in Exhibit 2, we have the following from the vessel to the Coast Guard: "Breath short since and during attacks X but now the patient is in bed and has been given penicillin X breath seems free."

If he had an infection in the pharyngo-esophagus, if he had had such an infection and had received penicillin for a day or two before, is it consistent with that disease that the penicillin might have relieved his shortness of breath?

A. The question is a difficult one to answer because in the first place an infection in the pharynx and esophagus [74] would not cause a shortness of breath.

Q. Would it cause a difficulty in breathing?

A. No.

Q. Isn't it possible that while taking the breath the patient could irritate the place where the inflammation or infection was, thus causing a tickling sensation?

A. Oh, a tickling sensation, yes; but not a shortness of breath.

(Testimony of Murray Abowitz.)

Q. Is this entirely consistent with a heart attack Doctor,—

Mr. Sikes: And I am reading, your Honor, from Exhibit 2.

Q. (By Mr. Sikes): —“at the time of attack has serious pains in windpipe.”

Is that entirely consistent with a heart attack?

A. It is if the pain is in the neck. And very commonly the pain of a heart attack begins below the breast bone and rises up into the neck and into the jaws and then down the arms. And if the pain was in that sense and subsequent the patient has on numerous times described that type of radiation, I would say that it is consistent with a heart attack that this patient had.

Mr. Margolis: May I inquire, counsel, which of the telegrams you were referring to?

Mr. Sikes: Surely. It is No. 385. Mine are numbered [75] apparently with the Coast Guard numbers, your Honor. It is dated the 6th of January. It is a long one.

May I point it out to you?

A. Yes, here it is.

(Whereupon the document was shown to counsel.)

Q. (By Mr. Sikes): But if the patient were referring to the area in his neck in which he takes in the air which goes down into his lung, the windpipe, would a pain, severe pain there be consistent with a heart attack? A. Yes, it could.

Q. And upon what do you base that?

(Testimony of Murray Abowitz.)

A. On the basis that I cannot fully accept the localization as described by the patient—

Q. Excuse me for interrupting, and I don't want to be discourteous, but I said assuming that the location of which the patient was talking when he talked about his windpipe was actually his windpipe, a pain there, severe pain, is not consistent with a heart attack, is it?

A. But it is not inconsistent because the pain can radiate up into the windpipe as well as into the jaws and teeth, for instance.

Mr. Sikes: I believe that is all, your Honor.

Mr. Margolis: I have just one or two questions, your Honor.

Mr. Sikes: May I say something first? [76]

(Whereupon there was a discussion between court and counsel.)

Redirect Examination

Q. (By Mr. Margolis): Doctor, there have been a number of questions asked you with respect to the symptoms which were set forth in the series of telegrams. You have those symptoms in mind?

A. Yes, sir.

Q. Now, are those symptoms consistent with—are some of those symptoms consistent with pharyngo-esophagitis?

A. Yes. It sounds to me like the patient may have had a sore throat.

Q. Are some of those symptoms symptoms which

(Testimony of Murray Abowitz.)

cannot be possibly explained by pharyngo-esophagitis? A. Yes, sir.

Q. Are some of those symptoms symptoms which can only be explained by a heart attack?

A. That's correct.

Q. Is it possible that the patient may have had both pharyngo-esophagitis and a heart attack?

A. Certainly.

Recross Examination

Q. (By Mr. Sikes): Doctor, which ones are absolutely inconsistent with pharyngo-esophagitis?

A. The outstanding inconsistent symptoms are the strangulation, shortness of breath, tremendous apprehension of feeling of impending death,—

Q. I am sorry. Those aren't in there.

A. Oh, what is in here.

Q. Yes. That was the question. Excuse me.

A. Excuse me. Then I will have to look over this.

Mr. Margolis: If I may suggest, just look over every other one because the ones in between are the replies.

Mr. Sikes: May I assist him, sir?

The Court: Yes.

The Witness: Why do you ask me which ones. Point them out.

Mr. Sikes: All right, I will read them to you then. This is from the boat:

"We have a man aboard who 4 days ago noted a slight tickling at his throat and the last two days

(Testimony of Murray Abowitz.)

has developed into slight strangulation affect."

Anything there that is entirely inconsistent with pharyngo-esophagitis?

The Witness: The strangling.

Q. (By Mr. Sikes): "He was given 1 capsule of chloromyceetin every six hours for two days X on Jan. 3 his strangulation effect seemed slight and then picked up and he had temperature." [78]

Anything there that is absolutely inconsistent with pharyngo-esophagitis?

A. The strangulation effect.

Q. "Patient was given two shots of penicillin 300 units each shot 13 hours ago and temperature receded."

Anything there inconsistent, as I have said before?

A. Inconsistent with pharyngo-esophagitis?

Q. Yes. All my questions will be that.

A. No, that is not inconsistent.

Q. "Strangulation effect is now slightly worse."

A. That is inconsistent with the pharyngo-esophagitis.

Q. "Heart ailment none known and patient now sleeping."

This is the same day. Is there anything there that is at all clinically significant with regard to the esophagitis? A. No.

Q. "Patient know to have had high blood pressure for last couple years."

Which was later corrected in a later message to low blood pressure.

Testimony of Murray Abowitz.)

“Pulse rate 69 X respiratory rate 18 breaths per min.”

Anything inconsistent there?

A. That is not consistent with anything except a sound [79] sleep and relaxation.

Q. That's all we are interested in.

“Breath short since and during attacks but now that patient is in bed and has been given penicillin breath seems free.”

A. That is inconsistent with pharyngo-esophagitis.

Q. “Correction to previous message X the patient previously had low blood pressure instead of high X no swelling in ankles X no previous heart ailment X position of ailment is from Adam's apple to shoulder blade in windpipe.”

The same question.

A. If the radiation was into the shoulder blade, as it is frequently used in that sense, in my experience that is inconsistent with the pharyngo-esophagitis.

Q. That, though, is a preface to your conclusion, that this must be actually referring to the shoulder blade?

A. That's correct. You would not use the shoulder blade which is in back to determine the level of something in front.

Q. This was done by a fisherman captain.

A. Well, a physician——

(Testimony of Murray Abowitz.)

Q. Well, none of these have been done by a physician.

A. Yes. But it is difficult for me to conceive of even a layman doing that. [80]

Q. "At time of attack had serious pains in wind-pipe with difficulty in breathing."

A. That is inconsistent with pharyngo-esophagitis.

Q. "With a feeling of strangulation."

A. Also inconsistent.

Mr. Sikes: That is all.

Mr. Margolis: That is all, your Honor.

The Court: You may step down.

The Witness: Thank you, your Honor.

The Court: The trial will be recessed until tomorrow morning at 9:30.

The court will adjourn.

(Whereupon a recess was taken until 9:30 o'clock a.m. of the following day, Thursday, February 24, 1955.) [81]

Thursday, February 24, 1955; 9:30 a.m.

The Court: Are there ex parte matters?

The Clerk: No ex parte matters, your Honor.

The Court: You may proceed with the case on trial.

Mr. Margolis: Thank you, your Honor. At this time I will call Dr. Hittelman to the stand.

The Court: Please swear the witness, Mr. Clerk.

DR. JOSEPH HITTELMAN

called as a witness by the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Give me your full name.

The Witness: Joseph Hittelman, H-i-t-t-e-l-m-a-n, M.D.

Direct Examination

Q. (By Mr. Margolis): What is your address, Mr. Hittelman?

A. 6317 Wilshire Boulevard, Los Angeles.

Q. Dr. Hittelman, you are a physician and surgeon duly licensed to practice medicine in the State of California?

A. I am, since 1936.

Q. Will you state briefly, Doctor, your educational background?

A. I received my premedical training here at UCLA and went to the University of California at Berkeley in San Francisco, receiving a degree, M.D., in 1936. I spent two years at Mount Sinai Hospital as interne and resident in medicine, and returned to Los Angeles in private practice of medicine until I entered the service. I was in the service [84] for three years.

Q. Were you in the service as an M.D., Doctor?

A. That's right. And upon my return I resumed practice, specializing in internal medicine. Subsequently, confining my practice almost exclusively to heart disease, following post-graduate work at the University of Southern California, full time, for the years 1951-52.

Q. Do I understand, Doctor, that in 1951 and

(Testimony of Dr. Joseph Hittelman.)

1952 you spent full time at the University of Southern California?

A. Post-graduate school of medicine in cardiology.

Q. And since then your work has been chiefly cardiology? A. Yes.

Q. Doctor, at the request of Dr. Abowitz and somebody from my office did you examine Mr. Anthony Vitco?

A. I did, on December 14, 1953.

Q. And you understood that that examination was in connection with litigation that was pending?

A. I did.

Q. Now, you examined him in connection with the possibility of a heart condition, is that right?

A. That is true.

Q. Now, as a result of your examination did you reach any conclusion as to whether or not at that time Mr. Vitco was suffering from a heart condition?

A. At the time I examined him I made a diagnosis of [85] angina pectoris, which is a heart condition, specifically.

Q. What does that mean?

A. That's the term for chest pain due to coronary insufficiency, or inadequacy of the circulation to the heart muscle itself.

Q. I see. All right, now, Doctor, I wonder if you would tell us upon what you based that diagnosis?

A. Well, we base a cardiological diagnosis on

(Testimony of Dr. Joseph Hittelman.)

several different features. We go into it intensively, depending upon the particular case in question. Of course, the complete history, physical examination, electrocardiogram, X-ray of the chest and certain other additional tests, such as circulation time, vital capacity and——

Q. Excuse me, Doctor. A. Yes.

Q. What I meant—I didn't make my question clear. What I meant is this: What was there with respect to these various elements of the examination, such as history, electrocardiogram and so forth, which led you to the conclusion in this particular case?

A. Well, we can go through the various features. The history itself of a man having chest pain which recurred to the arm, coming on with exertion, being relieved by the cessation of exertion is quite characteristic of angina pectoris. The physical examination in this case, as in any [86] angina pectoris, isn't particularly revealing, however, in that there is no enlargement of the heart, in this particular case; and possibly with the exception of the appearance of the heart under the fluoroscope with a minimal pulsation, which again is a rather tenuous thing to hold onto from the objective standpoint, physically there is nothing to be discerned, particularly.

As far as the electrocardiogram is concerned, there we have some specific changes, particularly when the series of electrocardiograms are looked over that the man had taken in the past. There are

(Testimony of Dr. Joseph Hittelman.)

changes that take place from time to time which are indicative of coronary insufficiency.

Q. Excuse me one moment. A. Yes.

Q. In connection with this examination did you have made available to you and did you consider in your examination the electrocardiograms which, according to the information you had received, had been taken by Dr. Murray Abowitz?

A. Yes, I had those available to me.

Q. I wonder if you will just take a look at the electrocardiograms which are in evidence as Libellant's Exhibits 3-A to 3-H and tell me whether those are the electrocardiograms that you took into consideration?

A. Yes, these are the tracings that I saw. That's right. [87]

Q. Now, I am sorry to have interrupted you. Did you in addition, Doctor, take electrocardiograms of your own? A. I did.

Q. Do you have them with you, Doctor?

A. I do.

Q. How many did you take?

A. This one is December 14, 1953. And then I had another one in a subsequent visit a year later, December 21, 1954.

Q. You examined Mr. Viteo twice?

A. I examined him exactly on the following dates: December 14, 1953; February 18, 1954; December 21, 1954; and I had him come in December 22, 1954.

Q. Doctor, are examinations over a period of

(Testimony of Dr. Joseph Hittelman.)

time with intervals of time elapsing helpful in diagnosing the condition of a heart condition?

A. Sometimes they are essential, not only helpful.

Mr. Margolis: At this time, if your Honor please, I would like to offer the electrocardiograms dated 14 December 1953 and December 21, 1954, taken by Dr. Hittelman as Libelant's next in order.

Mr. Sikes: I have no objection, of course, your Honor.

The Court: Received in evidence.

Mr. Sikes: Was it my impression that he had taken three?

Mr. Margolis: There were three visits and two electrocardiograms, [88] is that right, Doctor?

The Witness: I think four visits and two electrocardiograms.

The Court: Those will be Libelant's Exhibits 5-A and 5-B, Mr. Clerk?

The Clerk: 5-A and 5-B, your Honor, yes, sir.

(The exhibits referred to were received in evidence and marked Libelant's Exhibits 5-A and 5-B.)

Q. (By Mr. Margolis): Now, in addition, Doctor, before you go on with the electrocardiograms, did I turn over to you a photostatic copy of an electrocardiogram which I informed you, according to my information, had been taken at the United States Marine Hospital, or U.S. Public Health Service in San Pedro, California, on or about March 7, 1952?

(Testimony of Dr. Joseph Hittelman.)

A. I received a photostatic copy of an electrocardiogram. However, the identification page apparently is missing. I don't know the exact date.

Mr. Sikes: Well, I shall be glad to stipulate that there was in existence such an E.K.G. of March 7, 1952.

The Court: Taken by whom?

Mr. Sikes: Taken by the United States Public Health Service at San Pedro. And if I may glance at this a second—

Mr. Margolis: I make this statement to the court, that I personally went to the Public Health Service in San Pedro, saw the original of this and asked them to make me a photostatic [89] copy and received it subsequently.

The Witness: I might state that the electrocardiogram is so similar to the subsequent ones we have here in similar respects that it must be the same patient.

Mr. Sikes: I wonder if counsel is going to attempt to introduce this.

Mr. Margolis: Well, I would like to offer it because when the records were subpoenaed by counsel, I talked to counsel and he informed me he had subpoenaed the original records, and I assumed that they were going to produce the original E.K.G. And I think counsel did, too. But they didn't come forward with it. So under those circumstances I do want to offer it.

Mr. Sikes: Then I only have one objection. There is a diagnosis at the bottom of this particu-

(Testimony of Dr. Joseph Hittelman.)
an exhibit which of course, under the applicable
rules which I should be more than glad to cite, is
not admissible. The electrocardiogram itself is, and
I am perfectly willing for it to go in. But I do
not want the diagnosis to come into the record or
necessarily to the attention of your Honor.

Mr. Margolis: Well, may I suggest this, your
Honor: We don't have a jury here, so we don't
have the problem of a jury taking into considera-
tion matters they shouldn't. I differ in some re-
spects from counsel. I wouldn't like to spend the
time arguing. May it be *omitted*, say, subject [90]
to a motion to strike this portion, or even with your
Honor reserving ruling as to which portions of it
he will consider material.

The Court: As to whether or not the diagno-
sis—

Mr. Margolis: Will be considered by your
Honor.

Mr. Sikes: I am going to object, your Honor,
tenuously, and I would like to submit to the court
that the diagnosis has no point in coming before
your Honor.

The Court: Well, I will sustain your objection
as to the diagnosis and receive the document.

Mr. Sikes: Thank you, your Honor.

Mr. Margolis: May it be marked in evidence,
your Honor?

The Court: In evidence as Libellant's Exhibit 6,
is it, Mr. Clerk?

The Clerk: 6, your Honor, yes, sir.

(Testimony of Dr. Joseph Hittelman.)

(The exhibit referred to was marked Libellant's Exhibit 6 and received in evidence.)

The Court: Now, as to that ruling, Mr. Margolis, if you have any authority that the diagnosis appearing there is competent evidence, I will be glad to hear it.

Mr. Margolis: Ordinarily it is not, your Honor. I think there may be a difference where you have a diagnosis made in the course of the duties of the United States Public Health Service which has to make a diagnosis for the purpose of **determining** whether a man can go back to work or not, in [91] performing that as a public duty. I have no authorities on it. But there are no authorities the other way.

Mr. Sikes: Well, I do have authorities, your Honor, in a heart case, and in United States Public Health records, precisely on the point, if your Honor would care to hear it.

Mr. Margolis: May I have the authority, counsel?

Mr. Sikes: Certainly. The case is *Glazier vs. Sprague Steamship Company*, 103 Fed. Supp. 157; particularly the footnote at page 161. And the court there relies on *New York Life Insurance Company vs. Taylor*, cited 147 Fed. 2d, 297. That was a seaman. There was a heart disease difficulty. The United States Public Health records were sought to be introduced by the seaman, and the courts specifically held that the diagnoses thereon were not admissible.

(Testimony of Dr. Joseph Hittelman.)

Q. (By Mr. Margolis): Now, Doctor, I think at the time I interrupted you you were beginning to discuss the significance of the E.K.Gs. in the making of your diagnosis.

Now, considering together all of the E.K.Gs., including the ones you took, the ones Dr. Abowitz took and the one furnished you from the U.S. Public Health Service, will you indicate, generally, their significance and specifically anything that you think is of special importance?

A. Well, as I say, the chief characteristic here is the changing electrocardiogram. The changes chiefly take place in certain specific leads, and I believe that they are [92] significant in that they indicate coronary insufficiency. I might point out a couple. This cardiogram in question from the U.S. Public Health Service—

Q. That is the one dated March 7, 1952?

A. Yes, I presume that is the date.

Q. Incidentally, so that the record will be clear, there is no date that appears on there.

Mr. Margolis: I wonder if counsel would stipulate that it was taken on or about that date?

Mr. Sikes: I should be happy to, March 7, 1952.

The Court: Very well.

The Witness: Now, from March 7th to March 27th—I think that is the first one taken by Dr. Abowitz—there are a whole series of these, and I will try to keep them straight. There is some distinct change in the T-wave in Lead 3; the earlier electrocardiogram showing a sharp inversion of this

(Testimony of Dr. Joseph Hittelman.)

T-wave, and in the one approximately three weeks later there is considerably less inversion. There is also a change in the S-T Segment which is convex in the earlier tracing and is horizontal in the later one. That's the significant change there.

Now, as we go down the list of tracings, the chief things that happened are the changes in the unipolar lead AVL, wherein the T-wave from time to time will change from being upright to flat to inverted and that is the chief change [93] that takes place in these whole series of tracings. And it is the T-wave with which we are concerned particularly in coronary insufficiency.

Q. In other words, when you have a coronary insufficiency, it's the changes in the T wave that you expect to find in the E.K.G's., is that right?

A. That is correct. The cardiogram is essentially like a fingerprint. Unless something happens to the heart the cardiogram doesn't change. And a significant change in the cardiogram indicates something is occurring in the heart.

Q. I see. In other words, a healthy person whose heart is in good condition will have basically the same electrocardiogram during the period that his heart is healthy, is that correct?

A. That is true. Or else, certain simple changes which are easily discernible as being within normal limits, as to position of the heart with a deep breath and so forth.

Q. I see. Now, Doctor, on these E.K.G's., on all of them, the practice is, is it not, to take about

(Testimony of Dr. Joseph Hittelman.)

half of each lead normally and then the other second half with a deep breath, is that right?

A. No. Only in Lead 3, because Lead 3 is the Lead which picks up the changes in position of the heart with changes in a diaphragm.

Q. Doctor Abowitz yesterday went over each specific [94] E.K.G. which he had taken and indicated in each of those the deviations from the normal. Now, I wonder if you would take the two that you took and the one from the U.S. Public Health Service and indicate in each of them the deviations from the normal?

Mr. Sikes: May I approach the witness, your Honor?

The Court: You may.

The Witness: I think you took those two tracings of mine from me.

Mr. Margolis: Did I take those two tracings away? I am sorry. I did.

I find that maybe we had better have that marked separately, that little strip. Will you tell us what that is?

The Witness: Oh, this is the Lead AVL, the significant one.

Mr. Margolis: Excuse me. Is it part of this?

The Witness: Here's a date, 12-21-54.

Mr. Margolis: Oh, 12-21-54. I guess we don't have to make it marked separately.

The Witness: It should be stapled in here. There are a lot of extra leads and exercises and so forth which I did.

(Testimony of Dr. Joseph Hittelman.)

Now, the reason for this extra strip I took—this is an AVL Lead——

Q. (By Mr. Margolis): Now, when you are talking about the extra strip, you are talking about the one that when it [95] unfolds extends beyond the width of the folder?

A. That's right. This was to eliminate the feature I was just talking about, the changes in position of the heart as influencing the cardiogram. Now, this is an AVL Lead which I had taken here with normal respiration, with a deep inspiration and with expiration to see what changes would take place, whether the abnormalities in the AVL could be due to positional changes in the heart. But here in all phases of respiration it is the same. So the fact that in this AVL where the T-wave is flat it remains flat throughout. So we are not influenced here by physiological changes. This is an abnormality which remains so and is not due to the position of the heart itself giving us that. That is why this extra strip was done.

Q. All right. Now, will you tell us what the abnormalities are, and indicate in each case as you refer to these three the number of the exhibit and the date of the electrocardiogram.

A. All right. You want a comparison from the original tracing?

Q. Well, suppose you start with the one of March 7, 1952.

A. All right. That's March 7, 1952. And compare it to the one, the first one I took—this is

(Testimony of Dr. Joseph Hittelman.)

stapled in the wrong place. That should go there (indicating). That is a [96] later one. The first tracing I took was '53.

Now, in Lead 3 there is a decided difference between the early tracing and the one I have here in that the later tracing has an upright——

Q. Excuse me, Doctor. It will be difficult to follow that because you say "in Lead 3," and you don't say Lead 3 from where. Now, if you would indicate Lead 3 in Exhibit so and so as compared with Lead 3 in Exhibit so and so, we will be able to follow you. A. Oh, call them by exhibit?

Q. Exhibit and date, if you please.

Mr. Sikes: Those are the exhibit numbers.

The Witness: I see.

Mr. Sikes: As a matter of fact, if the court please, it is perfectly fine as far as I am concerned if he simply refers to them by exhibit number. He doesn't have to put in the date.

Mr. Margolis: Just so we have them identified.

Q. (By Mr. Margolis): This is Exhibit 6.

The Witness: Exhibit 6, which is the early electrocardiogram.

Q. (By Mr. Margolis): The U.S. Public Health Service.

A. The U.S. Public Health Service, yes. And the one I am referring to that I took is Exhibit 5-B.

Now, there is a decided difference between these two as [97] a year or two has gone by. In Exhibit 6, the early electrocardiogram, Lead 3 shows a convex S-T Segment with a sharply inverted T-wave.

(Testimony of Dr. Joseph Hittelman.)

Q. Will you show that to us, Doctor?

A. Convex T-wave and sharply—convex S-T Segment, sharply inverted T-wave. This is the Lead 3 which I took (indicating). These are decidedly different. This is a flat S-T Segment and an upright T-wave.

Now, this incidentally is not a respiratory change because here is the same Lead 3 in deep inspiration, which still shows the upright T-wave.

The AVL in Exhibit 6, the early electrocardiogram, shows a notch in the R-wave which is absent in the AVL which I took.

Q. The first one that you took?

A. The first one that I took, correct.

Now, I think the precordial leads are pretty much alike.

Now, in addition I may go into my tracing, which is Exhibit 5-B, which I took before and after exercise. Now, we do an exercise test to try to bring out abnormalities where there is a question of doubt. Mr. Vitco was exercised rather gingerly. This was not a full exercise tolerance test because I hesitate to do that. Catastrophies will happen and have happened. So after several sit-ups of about six or seven he began to get a little uncomfortable. We [98] stopped the test. And then started repeating the whole tracings over again. And these are all mounted here and parallel the leads before and after exercise.

Now, the significant one that has been changing all these times has been the AVL, and here, sure

Testimony of Dr. Joseph Hittelman.)

nough, after exercise we see that this AVL Lead flattens out considerably, which would indicate coronary insufficiency. The classical test for coronary insufficiency with exercise is to watch for changes particularly in the T-waves or deviations in the S-T Segment. And here there is a distinct drop in the T-wave as compared to it before exercise tracing.

Q. Doctor, if a person does not have a coronary insufficiency and you take an E.K.G. before exercise and after exercise would you expect changes of this kind in the E.K.G.?

A. No. There are minimal changes, but they do not fall within the arbitrary limits for diagnosis of coronary insufficiency on the basis of the exercise test. There may be lesser changes, different types of changes.

Q. But not changes——

A. But not to this degree, I don't think.

Q. Now, Doctor, are you completed with 6-B?

A. That's 6-B. Yes. Well, no, no. Mine was 5-B.

Q. 5-B. Excuse me.

A. And this is 5-A, which is the last one, December 1954. [99]

Now, here we have an entirely different picture again of the T-wave. Here we have a decidedly flat T-wave throughout as compared to the previous one. I beg your pardon. I am talking now about AVL, which has been the significant one all the way

(Testimony of Dr. Joseph Hittelman.)

through. Where as previously we have had a T-wave——

Q. Previously is 5-B.

A. 5-B. Now, this lead——

Q. 5-A.

A. ——is absolutely flat, a year later. There are no T-waves discernible. And this, as I mentioned before, was also followed through with deep inspiration, expiration, normal respiration and shows the same thing, so it is not a positional affair, with a drop in the diaphragm, a change in the position of the heart.

There are other features about the electrocardiogram which are still rather controversial. I took them more for my own interest. These are tracings down along the back of the chest.

Q. You say they are controversial?

A. I have them here all mounted on the cardiogram, too, but they are still more or less experimental.

Q. In other words, there is no general agreement?

A. No agreement. We will enter a whole field of dispute if we go into that, I'm afraid. [100]

Q. I see. All right, Doctor. Now, in your history were you informed that nitroglycerin relieved pain when it occurred as far as Mr. Vitco was concerned?

A. Yes. The way it is phrased here, "Doesn't get complete relief from nitroglycerin; some, but not complete."

Testimony of Dr. Joseph Hittelman.)

Q. Did you draw any conclusion from that factor, Doctor?

A. Well, the use of nitroglycerin is often a test in discerning whether certain symptoms referable to the chest are due to heart disease or not. And heart disease, characteristically, is relieved by nitroglycerin to varying degrees, whereas many other conditions are not at all. Often times when we are in doubt we may give the patient a few nitroglycerin tablets and have them report what effect they have when they get the symptoms.

Q. Now, Doctor, did you reach any conclusion as to the probable location within the heart of the damage condition?

Mr. Sikes: If the court please, may we have that as to which of the times he saw Mr. Vitco?

Q. (By Mr. Margolis): Well, I mean as a result of your entire examination of him.

Mr. Margolis: I think the doctor indicated that it takes several examinations to make a proper diagnosis.

Q. (By Mr. Margolis): Is that correct, Doctor, it takes more than one? That you would be unwilling to make a [101] diagnosis based on one examination?

A. Oh, not necessarily. Sometimes a diagnosis is very obvious. We can do it the first time.

Q. In this case, however?

A. But in this case, no, I don't think so.

Q. I see. Well, I want your diagnosis based upon all your examinations.

(Testimony of Dr. Joseph Hittelman.)

A. Well, that is one of the reasons I scouted the back of the chest trying to pick up an area which might indicate where he had a coronary thrombosis. And as I say, that is still a matter of dispute. There are certain areas in the heart which are essentially blind as far as the electrocardiogram is concerned from the standpoint of picking up uncontrovertible evidence of a mild cardiac infarction, coronary occlusion; and particularly in an individual of this type of build, rather broad and somewhat heavy, the upper part of the heart at the base is an area which rarely lends itself to easy electrocardiographic changes. And autopsy figures, even many cases over large series like this where electrocardiographic changes have never been evident will show a large mass of infarction in that area of the heart.

So that is one of the difficulties we run into. The back wall of the heart is the one that gives us the trouble as far as getting distinct electrocardiographic changes.

Q. Did you take electrocardiograms of the back? That [102] is, in the controversial area?

A. That's right.

Q. Are they available here in the event——

A. They are mounted on the back of the tracings.

Q. Now, Doctor, I want to show you——

The Court: Are they part of the exhibits which are in evidence here, Doctor?

The Witness: They are attached here, yes.

(Testimony of Dr. Joseph Hittelman.)

The Court: As a part of Exhibits 5-A and 5-B?

The Witness: Yes, sir.

Q. (By Mr. Margolis): Are there signs on them by which it is possible to indicate that they are the kind of electrocardiograms that you have testified to?

A. Yes. To any cardiologist these brief little notes in my handwriting would indicate right away where these are.

Q. Now, Doctor, I am placing in front of you Libelant's Exhibit No. 2, and I am going to ask you certain questions about that. But first I want to ask you about your familiarity with the medical term "pharyngo-esophagitis." Are you familiar with that term, Doctor?

A. Well, the terms are self-explanatory. I can't say I have ever made that particular diagnosis, except possibly in the swallowing of some caustic or something of that sort.

Q. Well, is it a kind of diagnosis that is commonly made in the United States? [103]

A. No.

Q. Can you explain what it is and why it isn't used in the United States, Doctor?

A. Well, pharyngo-esophagitis, obviously from the term itself, refers to an inflammation or irritation of the pharynx, which is the back part of the oral cavity, and the esophagus, which is the food pipe extending down to the stomach. Conditions which affect both of those structures I can hardly even think of except an actual chemical type of

(Testimony of Dr. Joseph Hittelman.)

caustic, because disturbances in the esophagus, which we call esophagitis, are usually due to some peptic activity or peptic digestion which is regurgitated from the stomach through the orifice into the esophagus and affects the lower part of the esophagus. To think of—

Q. Would you expect to find esophagitis in the upper part of the chest?

A. No. The point I am trying to make, it would affect the lower part of the esophagus. To reach up to the pharynx and actually irritate the pharynx is a little difficult to accept, I think. The condition is classically one of the lower third of the esophagus if it is based upon any disturbance as far as digestion is concerned. If it were based upon an infectious process, say of a respiratory infection, well, there, we get a pharyngitis, a nasal pharyngitis, pharyngeal tracheitis; it goes down the respiratory apparatus, not the [104] digestive apparatus. Infectious processes inherent to the throat and nose affect the respiratory membranes and not the digestive membranes. And that is why this whole concept is a little difficult to accept.

Q. Would it be pretty much like saying a "broken arm-leg"? It's two different things, is that right, Doctor?

A. I think so.

Q. Rather than one single diagnosis.

A. Because the esophagitis is linked up with the lower end of the esophagus, not the upper end of the esophagus.

Q. I see. By the way, Doctor, when you say

(Testimony of Dr. Joseph Hittelman.)

the "lower end of the esophagus," would you indicate about where that would be?

A. Well, that would be just about the end of the breast bone, I think would be the way to describe it.

Q. Now, Doctor, will you please take a look at Libelant's Exhibit No. 2, the first page. I might explain to you what this is. When Mr. Vitco was on the boat on January 2, 1952, these are the radiograms that were sent in describing by laymen the condition as they understood it, or as they were told about it, in order to try to get advice as to what should be done.

Now, if you will look that they say, "We have a man aboard who 4 days ago noted a slight tickling at his throat * * * " [105]

Now, would a slight tickling at the throat have anything to do with or be in any way a symptom of either a heart condition or what has been called here pharyngo-esophagitis?

A. Well, a slight tickling in the throat here in Los Angeles is usually due to some heavy smog. I don't know what it would be due to out on the high seas; usually some external irritation from the atmosphere or else some infection in the throat.

Q. That wouldn't indicate a heart condition in any way, is that right?

A. It doesn't sound like it, no.

Q. And it might have indicated some infection in the throat?

A. That is true.

Q. Now, " * * * * and the last two days has developed into slight strangulation effect."

(Testimony of Dr. Joseph Hittelman.)

Now, what would that indicate with respect to the two conditions we are talking about?

A. Well, here we are using a term that medically isn't used, and I suppose I have to interpret it. "Strangulation effect" would I suppose mean choking. And an ordinary individual who starts with a tickling in his throat doesn't then subsequently complain of choking. He complains of a sore throat. I mean, the symptom is so very obvious I don't know why the word "strangulation" would be used. One would [106] expect to say, "He's got a sore throat." If there was an infectious process in the throat.

Q. However, would a layman perhaps describe the strangulation, a choking effect which might have something to do with a heart condition?

A. Yes. That is a common description of a form of angina, which is a form of choking sensation. Strangulation sensation is used with infection in the throat. Practically the only time we ever hear of it would be a big paratonsil or abscess where there is actual projection and encroachment in the volume of the throat so that a person does feel like he is strangling and has every reason to feel like it.

Q. Now, when that sort of a condition exists does it exist as a result of attacks or is it a continuous condition?

A. Oh, that's a continuous condition; a very frightening one.

Q. All right. "He was given 1 capsule of chloromycetin every 6 hours for 2 days X on Jan. 3 his

(Testimony of Dr. Joseph Hittelman.)

strangulation effect seemed slight and then picked up * * *

We have already discussed strangulation effect and we won't have to go over that again.

“* * * And he had temperature X patient was given two shots of penicillin 300,000 units each last” —“shop” it says here.

“* * * 13 hours ago and temperature receded X strangulation [107] effect is now slightly worse.”

Now, what conclusions with respect to these two conditions do you draw from that; particularly with respect to the penicillin?

A. Well, apparently there was some fever. This sounds like there could have been some infection. And with a drop in the temperature from the administration of penicillin one would expect a successful result. However, this is one of those stories where the treatment was excellent but the patient is worse because the temperature has receded; however, the symptoms of which he complains are worse. So I think—well, one conclusion that we could come to is that there is an error in diagnosis; or there may be two conditions. The strangulation or the choking is not improving. Nevertheless, the other process which is possibly responsible for the fever is improving and responding to penicillin.

Q. So the strangulation effect you would not attribute to any infection of any kind, is that right, which might be cured by penicillin?

A. That's right.

Q. Would that, in your opinion, be a verifica-

(Testimony of Dr. Joseph Hittelman.)

tion of the fact that the strangulation effect is due to some heart condition?

A. I think we could accept that.

Q. Now, if you will skip one telegram and turn to the [108] third one, Doctor. The one in between is just a reply.

Now it says,

“* * * Patient now sleeping X patient known to have had high blood pressure * * *” and that later turned out to be a mistake. He had low blood pressure.

“* * * for last couple years X pulse rate 69 X respiratory rate 18 breaths per min.”

Now, on the patient sleeping, does that indicate anything with respect to either of these two conditions we are talking about?

A. Apparently he is—well, he is at rest and comfortable. The respiratory rate may be a trifle high for a man sound asleep. That’s all.

Q. You wouldn’t draw any great significance one way or the other from it, is that correct?

A. No.

Q. “Ankles not known will check immediately.” And then this, “breath short since and during attacks but now that patient is in bed and has been given penicillin breath seems free when not during attacks.”

What significance if any do you attach to that?

A. Well, the repeated mention of the word “attacks” would indicate that this is not a process such as an infection of pharyngitis or the term “pharyn-

(Testimony of Dr. Joseph Hittelman.)

go-esophagitis," which [109] should not come in attacks, even if that condition were to exist. That would be a constant discomfort. Perhaps it might be alleviated by the taking of food or some bland material to relieve the irritated mucus membranes. But when a person gets the disturbance described here in attacks one would tend to say that was caused not by a diagnosis of pharyngo-esophagitis at all.

Q. Would it point in any way to a heart condition?

A. Well, with the so-called strangulation one would be much more willing, or should be much more willing to accept that diagnosis than the other, I think.

Q. Now, it says, "face is pale." How does that fit in with either of these?

A. I don't think that is of any significance. The patient is asleep at this time?

Q. Yes. All right. Now, let's see. Now, if you will turn over again to the next one.

"The patient previously had low blood pressure instead of high."

Would that be of any significance, Doctor?

Do you find the one that I am talking about?

A. Did you skip—oh, you skipped one.

Q. You skip one because the ones in between are the ones that come the other way.

A. Well, these questions about blood pressure back and [110] forth are apparently the attempt by the physician, I suppose, to find out whether

(Testimony of Dr. Joseph Hittelman.)

the patient had any previous history of heart disease. Having had high blood pressure for some period of time would give him a lead as to the possibility of the existence of some hypertensive heart disease, for example. But if he had low blood pressure then that would throw that diagnosis out.

Q. As a pre-existing condition prior to this attack.

A. Well, it would eliminate the possibility of high blood pressure if he had low blood pressure. But the term "low blood pressure" is very loosely used, and we look askance at it quite a bit.

Q. "No swelling in ankles."

Is that of any significance?

A. That is significant in that it further corroborates this patient did not have heart disease, at least to the degree where he would have congestive heart failure, which would cause the retention of fluid in the body.

Q. "No previous heart ailment X position of ailment is from Adam's apple to shoulder blade in windpipe." Now, have you ever heard that phrase, "* * * from Adam's apple to shoulder blade in windpipe"?

A. Well, there are a lot of variations in angina. We are thinking about heart disease here, and all the way from the classical picture to pain in the angle of the jaw [111] alone, and this description could well fall within the coronary artery disease of angina pectoris.

Q. Would you expect that sort of a pain in con-

(Testimony of Dr. Joseph Hittelman.)

nection with the other ailment that we are talking about, the pharyngo-esophagitis?

A. Well, I think that would be a constant burning type of pain.

Q. And in what area would that be? Would that be in the windpipe?

A. Well, this whole area from the neck down, the throat and neck down could be, yes. They are all so intimately associated.

Q. “* * * with difficulty in breathing with a feeling of strangulation.”

What would that point to, Doctor?

A. Well, pain, choking, difficulty in breathing coming in attacks, that begins to look very definitely like a heart—

Mr. Sikes: May I interrupt the court for just one moment. I believe that is one entire sentence and Mr. Margolis should read the entire sentence.

Mr. Margolis: I will read that. I think counsel is right, your Honor. Let's take the whole sentence.

“At time of attack had serious pains in windpipe with difficulty in breathing with a feeling of strangulation.” I have read the whole thing, now. [112]

Mr. Sikes: All right.

Q. (By Mr. Margolis): Now, what conclusion do you draw from that entire sentence?

A. Well, I think my previous answer—as a matter of fact, I think I put that whole sentence together because this, as you say, coming on an attack, pain, difficulty in breathing, feeling of strangulation all can very adequately refer to an attack

(Testimony of Dr. Joseph Hittelman.)

of angina pectoris, or pain due to coronary artery disease.

Q. "After penicillin injection pains and strangulation eliminated leaving only a feeling that something lodged in windpipe X is awful hard for him to swallow." What would you refer that to, if anything, Doctor?

A. Well, there's a feature here of "after penicillin injection." Now, I don't know how long after, or what to assume. Penicillin injections presumably can do only one of two things: It can alleviate an infection after the penicillin has had time to work, or you can have the psychological effect of being stabbed by a needle and feeling that one is going to get relief; the reassurance of being administered medical attention, it may psychologically be so alleviated as to have the symptoms subside. And that, of course, is not at all unusual. In this particular case, because of no description of the actual time interval, I don't know. The way it is written here, "after penicillin injection pains [113] and strangulation eliminated * * *" I suppose that must be just the psychological effect or that the attack subsided by itself, because that couldn't have affected the infection that rapidly.

Mr. Sikes: If the court please, I might like to draw it to the court's attention, and possibly to the doctor and Mr. Margolis, the first message, a day or two previously in which they had testified they had given him penicillin, and the doctor may not have noted that, that there was some time period.

(Testimony of Dr. Joseph Hittelman.)

Mr. Margolis: I don't think that it necessarily follows from that that they meant it took 13 hours for strangulation to stop.

Mr. Sikes: Well, we will go into it on cross.

Q. (By Mr. Margolis): He says, "No attack since 2 a.m. X color normal X has no fever X plus 79 X breathing normal."

Now, if there was a heart condition, Doctor, and there was an attack, once the attack had subsided would he return to normal breathing?

A. Yes.

Q. Would you expect these kind of variations with respect to a condition such as pharyngo-esophagitis?

A. Well, I certainly wouldn't—I wouldn't expect the clear-cut repeated reference to "attacks" with pharyngo-esophagitis, [114] frankly.

Q. Now, Doctor, when you take these telegrams and the diagnosis, considering them made there by—incidentally, these were not done by the doctor. This was done by the captain of the boat or by somebody on the boat who was a fisherman and not a doctor. However, when you consider the information that you get from here, together with the information you obtained on the rest of the history from Mr. Vitco, together with the electrocardiograms concerning which you testified, do you have an opinion as to whether or not Mr. Vitco suffered a heart attack on or about January 2, 1952, at the time that these radiograms referred to?

A. Well, in the light of this described acute

(Testimony of Dr. Joseph Hittelman.)

episode and subsequent history and my examination, I think there is every reason to believe that at that particular time on shipboard Mr. Viteo did suffer a coronary occlusion.

Mr. Margolis: You may cross examine.

Cross Examination

Q. (By Mr. Sikes): Doctor, as I understand it, penicillin of course will not, at least physiologically, aid or assist in the treatment of a heart condition, will it?

A. Not if it's unassociated with infection, it wouldn't.

Q. Now, psychologically, I believe you mentioned that it might have some result insofar as the symptoms or effect [115] on the patient is concerned, is that right?

A. That is true.

Q. Now, these strangulations that one has in an acute coronary attack, this feeling of strangulation, I believe you said it was—or the other doctor said it was accompanied even by a feeling of impending death.

A. That is true.

Q. Those are real symptoms and feelings of the patient, are they not, this acute strangulation?

A. That is true. The patient describes them as such.

Q. Yes. Is it really your opinion that such an attack and such a feeling of strangulation can be completely alleviated psychologically by simply giving the patient an injection of penicillin?

A. Oh, yes, yes. You have to be aware of the

(Testimony of Dr. Joseph Hittelman.)

concept of coronary artery spasm, individual with deficient coronary circulation, who was aroused to anger, for example, and suddenly the vessels clamp down and already deficient circulation is cut off and immediately you get that pain. And if the cause for the anger is dissipated, or whatever the excitement may be or the occasion may be, the pain may be instantaneously relieved—all types of influences of such nature. We are dealing with a physiological process wherein these blood vessels are always subject to changes in diameter of their caliber. [116]

Q. Is there any difficulty in swallowing accompanying one of these heart attacks?

A. Well, during the choking sensations there is. When that is relieved there isn't.

Q. Well now, is that, too, a psychological reaction, or is there really difficulty in swallowing, physiologically speaking?

A. Well, the pain of angina pectoris apparently is a type of pain that is not easily borne when it is severe. Although, I have never seen myself—many patients when they get that pain they can no more think of swallowing than they can of doing anything else. They are just urgently waiting for the pain to leave them.

Q. As a matter of fact, Doctor, angina pectoris is really a symptom, isn't it?

A. That is true, yes. However, I don't think the American physician uses the term "angina pectoris" for anything except the symptom being due to heart

(Testimony of Dr. Joseph Hittelman.)

disease. The older terminology, it just means pain in the chest.

Q. I assume from the pectoral muscles.

A. That's right.

Q. Now, the feeling of something lodged in one's throat, would that be consistent with an infection of the throat?

A. I don't think there is ever that much confusion with an infection of the throat, because everybody at sometime [117] or other has had a sore throat and they describe it as a sore throat. They don't describe it as a lump in the throat or choking or a lot of other things; unless there is an actual encroachment on the volume of their throat by an abscess of tremendously swollen tonsils, or something like that.

Q. Let us assume that the patient no longer feels any strangulation effect at all, but nevertheless feels something lodged in his throat. Is it your opinion that that then is due to some cardiac difficulty?

A. No, that's not commonly described. That is true.

Q. I assume then a feeling of it being difficult to swallow, that is consistent, I assume, with an inflammation or infection of the throat, is that correct?

A. Difficulty in swallowing?

Q. Yes. A pain on swallowing.

A. Yes.

Q. And isn't it true, Doctor, that if such a pain and such a throat condition were due to infection,

(Testimony of Dr. Joseph Hittelman.)

isn't it true that penicillin might very well alleviate that condition?

A. Yes, within a matter of hours.

Q. Yes. Assuming, then, Doctor, that Mr. Vitco had a tickling sensation in his throat, and in fact it was due to some infection in his throat and he was given two shots of penicillin, 300,000 units each on January 4th, do you believe that by January 6th that they might very well have [118] relieved the infection? A. I think so.

Q. Is the feeling of not being able to get enough air, is that consistent with this type of heart attack?

A. Very much so. During the time of the attack, yes.

Q. If the patient, before he ever had the attacks, had difficulty in not getting enough air, then would that affect your last answer?

Mr. Margolis: That is objected to on the grounds it assumes facts not in evidence.

Mr. Sikes: Well, the doctor is being called, if the court please, out of turn. I had intended to bring those out on cross examination of Mr. Vitco. I have been unable to do so.

Mr. Margolis: That isn't my point, your Honor. My point is, your Honor, that the assumption that the prior shortnesses of breath, if they existed, didn't have anything to do with the heart, I don't think can be established.

The Court: The question, as I understand it, is that the doctor is asked to assume that these shortages existed prior to the so-called attacks, and if

(Testimony of Dr. Joseph Hittelman.)

he so assumed, he was asked if he would alter his opinion. Is that the question?

Mr. Sikes: Yes, sir.

Mr. Margolis: Well, I would like to have it more specific as to whether this came in attacks—in other words, have the question be meaningful. [119]

The Court: Well, if the doctor understands it—

Mr. Sikes: Do you understand me, sir?

The Witness: If you repeat the question. I think I know what you have in mind.

Q. (By Mr. Sikes): All right. What I had in mind was, you had stated that one of the symptoms, as I understand, of this type of heart attack—we'll say in this particular case—was a shortness of breath, and if that were one of the symptoms with regard to Mr. Vitco, let us say, and you answered yes, that it is one of the symptoms. And then I asked you if the fact that he had shortness of breath before these attacks would that then affect your answer to the first question?

A. Well, we would have to know the exact circumstances. I can differentiate for you, if you wish.

Now, oftentimes, together with a pain of the choking, there is a shortness of breath during an attack. There are also some people who get angina without pain, peculiar as that may be, who may be lying in bed, particularly at night, and will wake up with shortness of breath. And we feel that that may be angina, and often is.

Then there are other people, a vast host of people that we have to distinguish from when we are deal-

(Testimony of Dr. Joseph Hittelman.)

ing with this problem, those who just have what we call "air hunger," who at rest will tell us they are getting short of breath and [120] can't catch a deep breath, and so forth. That is a straight anxiety type of symptom. But shortness of breath that comes on with effort and breast pain certainly is related to angina. And I would say that shortness of breath under the other quiet circumstances may well be psychological disturbances.

Q. I believe you stated from your physical examination of Mr. Vitco's heart that—I believe your words were, "There was nothing particular to be discerned there." Is that correct, sir?

A. That's right.

Q. Then I believe you went ahead to state that your conclusion in the case generally was based, I believe,, principally on the series of EKG's. Is that correct, sir?

A. The history and the electrocardiograms together are the chief ones, yes.

Q. Let's assume, Doctor, that you had received no history at all from Mr. Vitco and examined those electrocardiograms, which are of course a form of objective findings. Would your conclusion have been any different than what you have stated on direct examination?

A. I wouldn't make a diagnosis on electrocardiogram alone, not only in this case but in many, many other clear-cut cases, actually. I don't think—when we resort to laboratory evidence alone we

(Testimony of Dr. Joseph Hittelman.)

are on very shaky ground. As a general rule, I wouldn't do it. [121]

Mr. Sikes: Mr. Clerk, may I see Exhibit 3-G?

(Whereupon the document was handed to counsel.)

Mr. Sikes: May I approach the witness, sir?

The Court: You may.

Q. (By Mr. Sikes): Now, Doctor, will you look at 3-G. I mean, the tracing. A. Yes.

Q. And will you also look at Exhibit 6, which is the electrocardiogram taken at the United States Public Health Service. A. Yes.

Q. Now, you have told us that generally the main significant clinical finding was, as I believe, on the AVL Lead, is that correct?

A. No, the Lead 3 here is distinctly different. Now, the AVL—no. Chiefly Lead 3. Both of them do have differences.

Q. Now, will you tell us what in your opinion are the differences, if any, between those two particular electrocardiograms which you have in your hand, which are Exhibits 6 and 3-G?

A. The differences?

Q. Yes. Are there any significant differences?

A. Yes. In Exhibit 3-G, in Lead 3, we have a depressed S-T Segment and an upright T wave.

In Exhibit 6 there is a convex S-T Segment and a sharply inverted T-wave in Lead 3.

Q. Would it be significant to you, those findings, that his condition had changed between the dates of those two?

(Testimony of Dr. Joseph Hittelman.)

A. I think it is quite suggestive, yes. In Lead AVL there is also a difference in the configuration. In Exhibit 3-G, in Lead AVL there is a slightly elevated S-T Segment, with a low T-wave.

In Exhibit 6, in the same Lead AVL there is a notched R-wave and a quite ample T-wave.

Q. And those findings in Exhibit 6 are not present in 3-G, is that correct?

A. That's right, yes.

Q. Now, Doctor, will you take 3-G and 3-H, those two, and will you tell me what, if any, difference or distinction there is between those two exhibits?

A. Well, here the difference is in the AVL Lead. In 3-G we have a slightly elevated S-T Segment and a low T-Wave.

In 3-H we have an absolutely flat T-Wave. That's the essential difference there.

Mr. Sikes: Thank you, Doctor.

Just one moment. I believe that is all, Doctor. Thank you. [123]

Redirect Examination

Q. (By Mr. Margolis): Now, Doctor, infection is usually associated with temperature, is it not?

A. That is true.

Q. If the temperature goes down it is an indication that the infection is cured, correct? Or is improved? A. Improved, yes.

Q. So that if infection caused choking, Doctor, and the infection was improved, you would expect

(Testimony of Dr. Joseph Hittelman.)

the choking to get better and not worse, if that correct? A. That's right.

Q. And if the temperature goes down and the choking gets worse, then you wouldn't attribute the choking to any infection, is that right?

A. That's right.

Q. Now, Doctor, we have here a heart condition—I think you told Mr. Sikes on cross examination that you would never make a diagnosis based upon EKG's alone; that you always required history.

A. Well, it's a bad policy.

Q. Do you know of any place where it is accepted medical practice to make a diagnosis on EKG's alone?

A. Well, an electrocardiographer is asked to make a diagnosis and may have a quite abnormal electrocardiogram, [124] and if he doesn't know the history he makes mistakes. And that is why we see the mistakes in top-notch electrocardiographers who interpret electrocardiograms just from the standpoint of what they see before them, and the autopsy table will show them incorrect. Whereas, an ordinary general practitioner may be able to outshine him because he has seen the case and he knows what is going on.

Q. All right. Now, taking all the electrocardiograms together, with the changes that occur in the electrocardiograms and the history upon which you base your diagnosis, and considering the contents of the telegrams, Libellant's Exhibit 2, is it your

(Testimony of Dr. Joseph Hittelman.)

opinion that the heart condition originated on or about January 2, 1952, or some later date?

A. I think it originated at that particular time; the episode in question.

Q. On or about January 2nd?

A. That's correct.

Mr. Margolis: That is all.

Mr. Sikes: I may have one question, your Honor.

Recross Examination

Q. (By Mr. Sikes): In the absence of the history which was given to you by Mr. Vitco, you would be unable to set any time as to when this coronary attack occurred, is that correct?

A. That's correct. [125]

Mr. Sikes: That is all, sir.

The Court: You may step down, Doctor.

The Witness: Thank you.

(Witness excused.)

The Court: We will take the morning recess at this time.

(Short recess.)

Mr. Sikes: If the court please, there may be some misunderstanding and possibly some confusion on Exhibit 6, which was the electrocardiogram from the United States Public Health Service, together with a diagnosis thereon. I cannot remember if your Honor made a ruling on the diagnosis at the time I believe you admitted it into evidence.

The Court: I intended to exclude the diagnosis part of the document.

Mr. Sikes: I see. Thank you.

Mr. Margolis: I will ask Mr. Vitco to resume the stand, your Honor.

The Court: You may.

The objection to it, I assume, is hearsay.

Mr. Sikes: Yes, your Honor.

The Court: On the diagnosis.

Mr. Sikes: Oh, yes. [126]

ANTHONY VITCO

the plaintiff herein, called as a witness in his own behalf, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

By Mr. Margolis:

I am not absolutely positive, your Honor, just where I left off.

The Court: I think in your last question you were just getting to the occurrence at sea.

Mr. Margolis: That was my recollection. Though, there might be some slight repetition.

Q. (By Mr. Margolis): I believe, Mr. Vitco, that I was asking you about your becoming ill on January 2, 1952. A. That's right.

Q. About what time of the day did you become ill?

A. It was right after dinner, Mr. Margolis; must have been around from 6:00 to 7:00 in the evening.

Q. Now, will you tell us where you were at the time and what you were doing?

(Testimony of Anthony Vitco.)

A. I was just through with serving the dinner, and just through with the dinner.

Q. Now, were you still in the galley?

A. I was still in the galley.

Q. What had you done that day? [127]

A. What did I do that day?

Q. What work did you do that day?

A. Ordinary work every day; cooking and——

Q. You did your regular work?

A. That's right.

Q. That was the third meal you had made and served?

A. That's right. That was the third meal.

Q. Now, will you tell us what happened, and how you felt? Had you been all right during the day?

A. It happened all at once, Mr. Margolis. Just like——

Q. What happened?

A. I got a funny feeling, starting to get—like dizzy. And I didn't say nothing to the boys. I got ready with my dinner. Then they washed the dishes after we got through eating. The boys usually wash the dishes. Well, I just felt—all at once I felt funny. I went in, away from the galley, I went in my sleeping quarters and I laid down with my clothes on.

Q. You say you started feeling funny. Now, tell us how you felt.

A. Well, funny, the way it is hard to describe. Well, as soon as I laid down I lost my breathing.

(Testimony of Anthony Viteo.)

I felt a terrible pain in my chest, down to my——

The Court: What part of your chest?

The Witness: Right here, from the stomach up here [128] (Indicating).

The Court: The center part of your chest?

The Witness: And toward the left. Right here from my, oh, how would you say it—from my stomach, or from here down to here, and my left side, my arm (indicating). And, oh, I was scared I was going to die. Just like something was pressing across my chest. I tried to holler. I couldn't holler.

Q. (By Mr. Margolis): When was it that you tried to holler? Where were you at that time?

A. I was lying in bed with my clothes on. It happened in about two minutes, you know, after I laid down. I lost—about a minute after I laid down, in fact, with my clothes on in the bunk I tried to holler but I couldn't very well breathe.

Q. And then what happened?

A. Then a boy, Mr. Joncich's nephew, passed by me and I motioned with my hands to him to come over. And so he was very close to where I was laying down and saw there was something wrong with me. And he asked me—I could hear what somebody says but I couldn't talk, from pain. And I was scared I was going to die. Something came over me, terribly. I never experienced this before in my life.

Q. Did you ever have this kind of pain or this kind of feeling at all? [129]

(Testimony of Anthony Vitco.)

A. No, Mr. Margolis, I never did experience anything like that.

Q. All right. Who was that? Was his name Joncich, too? A. Yes.

Q. What was his first name?

A. Miro, I think. We call him Miro Joncich.

Q. What did he say to you?

A. Then he went after the skipper.

Q. Did he say anything to you?

A. He asked me what was the matter with me.

Q. Did you reply?

A. I couldn't reply. I just went like this—I don't know what I did. I couldn't reply because I couldn't talk. I saw him but I couldn't—

Q. All right. Then did he go away?

A. He went after Mr. Mardesich. That's the skipper.

Q. And did he come back with the skipper pretty soon?

A. I didn't see him come back, but the—

Q. Did the skipper come back?

A. The skipper came with two of his brothers. I could hear him talking. I can tell by the voice. Maybe I was more out than, you know,—what I mean, I couldn't—but I can hear Joe. Mr. Mardesich came in, and his brother Tony and Nickie. They were helping me. [130]

Q. Did they say anything to you?

A. Well, Mr. Mardesich says, "What's the matter?" He asked me what was the matter. They saw

(Testimony of Anthony Vitco.)

I was sick and pretty soon they gave me some kind of a shot.

Q. All right. Then what happened?

A. Well, then I must have went to sleep. When they give me a shot it kind of makes me feel like—oh, different a little bit. And I must have went to sleep later.

Q. Now, did the pain subside after a while? Did the pain go away after a while?

A. Well, it didn't went away completely, but it didn't scare me any more like before. I felt better. I felt better. It didn't scare me, like I was going to die. It quiet me down a little bit, or something. I don't know.

Q. All right. Then you went to sleep?

A. Yes, sir.

Q. Did you wake up during the night?

A. Yes, sir, I did wake up.

Q. Do you have any idea about what time it was?

A. I don't remember, because I had the same feeling as before. It must have been nighttime. And I had the same feeling like before. I got cold and pain and scared, and the same thing like before. And there was a watchman. There is two men on a watch, or even three sometime—engineer and two watchmen. And one man passed by. I don't [131] recall who he was. And I did the same thing to this fellow as I did to Miro, called him over with my hands. And when he saw my—I guess the way I was, he went out to Mr. Mardesich, and he came

(Testimony of Anthony Vitco.)

down right away, I guess, and he did the same thing, I think, they did the first time.

Q. He gave you another shot?

A. Yes, sir.

Q. And when you say Mr. Mardesich, you mean the Mr. Mardesich who is the skipper?

A. He was the skipper, yes.

Q. You mentioned that he had two brothers, also.

A. Yes, sir. He got two brothers on the same boat.

Q. But the one that came down was the skipper?

A. The skipper and both of his brothers.

Q. Again?

A. Yes, sir. They were the ones that were taking care of me.

Q. All right. Then did you go to sleep again?

A. Yes, sir.

Q. When did you wake up again after that?

A. Well, I wake up in the morning sometime. I didn't have a watch with me. I don't know what time it was. But it was in the morning.

Q. How did you feel then?

A. Well, I felt a little bit better. Still pain, but [132] not that terrible crushing pain, and scared. I kept—I remember when I told Mr. Mardesich that I was going to die, and he told me that he called the Coast Guard and they were going—the plane will come over after me in Magdalena Bay. He changed the course and went toward the Coast Guard.

Q. By the way, where was the boat on the eve-

(Testimony of Anthony Vitco.)

ning of January 2nd at the time that this first attack took place?

A. Well, sir, I can tell you roughly. I am not a navigator. But we left the Guadalupe Island and we were going toward Secoura Island, which is more south, another fishing island. And in between there—of course, I can't remember. I don't think we were very far away from the first island, which is Guadalupe.

Q. You were then between Guadalupe and Secoura Island?

A. Yes. But I don't know how far we were from Guadalupe. The captain will correct me on that later. He knows.

Q. So you had this conversation with the skipper. You told him you believed you were going to die. Did you tell him anything else?

A. That was my feelings, sir.

Q. Did you tell him anything else?

A. I told him I want to go home because I like to see my two children and my wife before I die. The way I felt—

Q. By the way, you are married, are you? [133]

A. Yes, sir. I have two children.

Q. They live with you? A. Yes, sir.

Q. How old are your children?

A. They are 17 and 19.

Q. Now, what happened during the rest of the day?

A. Excuse me a minute. What day? What are you talking about?

(Testimony of Anthony Vitco.)

Q. Now, do you want to rest for a minute?

A. Wait a minute. Go ahead.

Q. You woke up in the morning of January 3rd, the day after the attack. You remember that? And you talked to the skipper.

A. Yes, sir.

Q. You told us about that. Now, did you talk to the skipper later on that same morning again about whether you would go ashore or not?

A. Yes, sir.

Q. Will you tell us what happened at that time?

A. He told me, Mr. Mardesich told me that the Coast Guard told him that they can—or they not coming when we got to this port where we was supposed to meet the Coast Guard, and he says that willing to take me to the nearest port and send me home with the plane, the private plane. But he [134] says he took my temperature and said, "Tony,"—that is my name—he says, "You haven't got any temperature." And he says, "If we will send you home——" There were not fish on board yet. He says, "It will be bad without cook." He says, "We have to go home; all of us in a case like that."

Of course, there is always someone that can cook. But, he says, "We will go down south and if you get bad again" he says, "you just got probably cold; something like that."

Q. All right. Did he say he was going to take you in or going back out to the fishing grounds, or what?

(Testimony of Anthony Vitco.)

A. No. He said, "We are going to go down to some fishing grounds."

Q. So the boat did not take you into a doctor or take you anywhere else at that time, is that right?

A. No, sir.

Q. Did you work that day?

A. That day?

Q. You had your attack the night of January 2nd. The next day was January 3rd. Did you work on January 3rd? A. No.

Q. Now, did you work for the next several days?

A. I worked after that. When we got on the fishing grounds I started.

Q. But my question is, did you work for a few days after January 2nd? [135]

A. Well, I don't recall the day. I know—I know I went to work. I remember I went to work when we got on the fishing grounds. And in between I did very little. I mean, I worked but I didn't work like I should.

Q. Well, when was the first time after you had the attack that you did any work?

A. I don't know. I think it took about four days to get on a fishing ground—must have. Then there was some fish to be seen in that spot where we were.

Q. Well now, Mr. Vitco, just try to listen to my question.

How long after you had the attack was it before you first did any work? You know, a day, two days, three days, four days; whatever it was.

(Testimony of Anthony Vitco.)

A. What kind of work do you mean, sir? My cooking job?

Q. Well, any kind of work.

A. Oh, well, on the way down, I believe, a couple of days afterwards, I tried to do some cooking, which didn't really went good. And then some guys tried to help me. I believe one day Mr. Lipich took the kitchen, and he didn't want it, didn't like it. He cooked one meal. In other words, I was forced to cook most of the time until I got a plane to go to Los Angeles.

Q. All right. Now, as I understand it for a couple of days you didn't do anything, is that right?

A. Yes.

Q. All right. Now, after that were you asked to start cooking, or did you just do it by yourself?

A. Mr. Mardesich, yes; as I told you. He came over and he asked me if I wanted to cook; that there is some fish to be caught here and if I can only cook *their* going to fish. Well, I give up. I did my best, Mr. Margolis. But my cooking wasn't as it should be, because I worked about 10 minutes and then I have to sit down or lay down—pain. I use aspirins three or four at a time to kill my pain. Nothing would help. Towards the evening I would get worse. When I climbed the steps to go on what we call "pilot towers" to get my potatoes, my meat, for instance, for the boys, I make those four or five steps, whatever it is I can make, and then I have to sit down and rest a little bit. So I didn't

(Testimony of Anthony Vitco.)

work the way I would have otherwise, if I was—but I tried.

Q. Now, during that time while you were out there in the fishing ground were some fish caught?

A. I believe we caught very little. I don't know how many tons, but not too many.

Q. Did you help in the fishing like the cook usually does?

A. The first day I did, sir. And then when I—just a little bit. My job is what we called on the lift line, and when I got hold of this lift to pull, well, my chest and [137] this arm of mine were absolutely pretty near paralyzed. I couldn't strain that, you know. Then Mr. Mardesich told me to get away and go in the kitchen and just cook and don't pull the net no more. And so I did.

Q. Now, did you later on have another severe attack like the first one that you had?

A. Yes, I did.

Q. When was that?

A. Well, that was—I had two later on, sir, if I recall.

Q. When was the first one?

A. The first one, before we went to Manzanito.

Q. Do you know the date?

A. It must have been 25th or 22nd of February.

I mean—

Q. January? A. January, sir.

Q. And what happened? About what time of the day was it, and what happened?

A. Well, it was at nighttime, I believe, in the

(Testimony of Anthony Vitco.)

evening. The worst I usually get them at nighttime. Well, it happened that Mr. Mardesich went in with a boat and he went to see a doctor.

Q. No. What I want to know—please listen to my [138] questions, Mr. Vitco. I want to know about the attack now. What happened as far as the attack is concerned?

A. Oh, it's the same story, Mr. Margolis; the same way; the same, painful, frightened thing that came on me like always. I get chill and cold and pain in my chest and pain in my arm and afraid I am going to die—the same thing.

Q. Then when that happened did the boat go into port?

A. Well, he thought it might be a good idea to see a doctor—Joe Mardesich—and we went in Manzanillo.

Q. And how far out of Manzanillo were you at the time you had the attack, do you know?

A. I don't recall, sir. Maybe 10 or 12 hours out, which would be—I am not sure. I don't want to commit myself to the mileage because—

Q. Well, were you able to get in in about a day or so to Manzanillo? A. Yes, sir.

Q. And did you go there to see a doctor?

A. Yes, sir.

Q. How soon after you had this attack about the 22nd or 23rd or 24th of January, how soon after you had that attack did the boat leave for Manzanillo?

A. Well, Mr. Margolis, there is one thing that

(Testimony of Anthony Vitco.)

I don't recall, if we went right there or if Mr. Mardesich went the next day. I don't recall. I don't want to say one thing [139] from the other. I don't recall.

Q. It was either right after the attack or the next day?

A. Well, there I can't tell you when we went in. I know we went soon, but I don't know if we went in the night or the morning. I don't want to say.

Q. Now, did you see a doctor there?

A. Yes, I did.

Q. Do you remember the doctor's name?

A. Well, I remember I see him, but I don't remember his name. I mean, I could recognize him when I see him, but I don't remember his name. It was in a hospital in Manzanillo.

Q. Would Martinez mean anything to you, Dr. Martinez?

A. It could be, sir. That sounds like him.

Q. Did you go to the doctor alone or did you go with somebody?

A. Well, I went—Mr. Mardesich, the captain, went with me. And the broker.

Q. What do you mean by "the broker"?

A. The broker is a man that clears the boat in and out from the port—I would say, a Mexican or custom broker.

Shall we say a Mexican or custom broker, something in that line. A broker sees your papers and clears your entry and departure of the port.

(Testimony of Anthony Vitco.)

Q. So the three of you went to see this Dr. Martinez? [140] A. Yes, sir.

Q. Where did you go to see him?

A. In the hospital.

Q. And did he examine you there?

A. Well, yes, he did, and he didn't. He hasn't go much equipment to examine a person in that hospital.

Mr. Sikes: May I move that the answer be stricken, your Honor, on the ground that it is a conclusion of this witness relative to a medical question?

Mr. Margolis: Well, I think whether there is any equipment or much equipment in the hospital is something a layman can know as well as a doctor. He may not be able to describe it.

The Court: Denied. You may go into it in detail on cross examination if you so desire. The motion is denied.

Q. (By Mr. Margolis): About how long did the doctor take to examine you, if you remember?

A. Oh, I guess we were there about 10 minutes, something like that—15.

Q. And did the doctor speak English or Spanish? A. He spoke Spanish.

Q. Did he speak English, also, as far as you could tell? A. A few words, I believe.

Q. But did he carry on his conversation mostly in [141] Spanish?

A. He did it all in Spanish because the broker,

(Testimony of Anthony Viteo.)

sir, the other man that was with us, he speaks English pretty fair, I would say.

Q. All right. So in the conversation, you would be telling us, if you tell us, about a conversation and it would be what the broker said in English that Dr. Martinez said, is that right?

A. Dr. Martinez, after he got through examining me, he told the broker, the way I complain about—

Mr. Sikes: Excuse me, please, if I may interrupt you. I don't know what is coming out here. I don't know whether this is something that the broker told him; whether the conversation is what the doctor said in English or Spanish, and I would like to interrupt at this time for an objection, sir.

Q. (By Mr. Margolis): Let's get this clear: After you got through the examination the doctor said something in Spanish, is that right?

A. He says everything what he meant, sir, in Spanish to the broker.

Q. And then the broker would translate into English? A. That's right.

Q. All right. Now, do you understand any Spanish?

A. I did that much, sir, yes. I do not to speak perfect, but I understand fairly well, and I can speak but [142] not much good. But enough to understand.

Q. Were you able to understand what the doctor said in Spanish or did you just understand what the broker said in English?

(Testimony of Anthony Vitco.)

A. I understood both of them, sir.

Mr. Sikes: I am going to object to that on the ground that it has not been established, there is no foundation at all that he can understand Spanish.

The Court: He says he can.

Mr. Sikes: That is a conclusion of his.

The Witness: Would you like to ask me, sir, a few words in Spanish?

Mr. Sikes: It makes no difference to me. I speak it as well as I do English.

The Court: Address the court.

Mr. Sikes: I am sorry, sir.

The Court: The objection is overruled. You may cross examine on his ability to understand or speak Spanish.

Mr. Margolis: I think there was a pending question to which there was an objection. May I have it read, your Honor?

The Court: Yes.

(Record read.)

Q. (By Mr. Margolis): What did the doctor say after the examination was completed?

Mr. Sikes: Objection, your Honor on the grounds that [143] this is entirely uncertain as to whether the answer to this question will be what the doctor said in Spanish or the alleged translation by the broker. And that is very important.

The Court: It calls for what the doctor said in Spanish. Now, that is the question.

Q. (By Mr. Margolis): All right. Now, tell us what the doctor said in Spanish.

(Testimony of Anthony Viteo.)

The Court: Say it in Spanish. Say just exactly what you heard the doctor say.

The Witness: The Spanish doctor said to the broker, "Esto persona esto mucho inferma."

Mr. Margolis: No. You want it in Spanish?

The Court: That is what the doctor said. And you asked for that, as I understand it.

Q. (By Mr. Margolis): Well, translate into English what you understood the doctor to say in Spanish.

A. He says, "This man seems to be very sick. Yo no tengo——"

Q. No. no. Translate——

A. That's what I say in Spanish first, "This man seems to be a sick man." And that's the quotation of that first word. "Yo no tengo facilidad." "I haven't got the facilities for this man——" we'll say to examine me, you know, perfectly. "Yo creo que sea mejor——" I think it would be the best—"que esto hombre a Estados Unidos" if you would send this man [144] to the United States in the hospital.

Q. All right. Was there a translation into English by the broker at that time?

A. Yes, sir. He told Mr. Mardesich.

Q. And did the broker say in English substantially what you have just said in English?

A. That's right.

Q. Then did you have a discussion with the skipper later on about what to do?

(Testimony of Anthony Vitco.)

A. Well, the skipper right there he asked the broker, "will you please"—

Q. Excuse me. Was the skipper speaking in English?

A. Yes, sir. Mr. Mardesich, the skipper, asked the broker, "Will you please ask the doctor if he could give us some penicillin, and I will try to take the man out a few more days, and if this doesn't help then then we are going to send him home." Being that they tried penicillin on me before and probably Mr. Mardesich thought that—

Q. Don't tell me what Mr. Mardesich thought,—

A. Excuse me.

Q. —just what he said.

A. All right. We got the penicillin and we went out the same evening. I got in a pain again. Mr. Mardesich—

Q. When you say you went out, do you mean—

A. We went out fishing again. [145]

Q. The boat left to go to the fishing grounds?

A. That's right.

Q. The same fishing grounds you had been to before?

A. As I say, it is pretty hard when you are out from shore for an amateur or somebody like myself—if you don't see shore I can't know where we are. It's pretty hard for me to recognize. But the skipper can. He is a navigator and he shoots the stars.

We went out, and the same evening Nick Mardesich, the captain's brother, he gave me a shot of that

(Testimony of Anthony Vitco.)

Mexican penicillin, or whatever it was, I don't know. It wasn't the same as the United States stuff, because I saw some white crystal in one bottle and some liquid in the other, and he has to mix something.

Well, anyway, that makes me feel worse. In other words, I don't know if that did, but I was getting worse.

I don't recall how many days later, I got another attack.

Q. Now, in the meantime were you working?

A. I was working in the meantime, but not very many days later, sir, I got another attack.

Q. All right. Now when you say you were working, were you working—

A. Well, cooking, yes, sir.

Q. Were you able to work the way you had before the first attack? [146]

A. Never, never, no; never like before.

Q. Now, you had another attack within a few days after that, is that correct?

A. Yes, sir.

Q. Then what happened?

Well, I will withdraw that.

Was that attack about the same as the ones you had before?

A. This last one was just about the same as I had got the earliest one, the two bad ones, you know. Because in between I got a few, but not as bad as the two first ones and the two last ones that I got here. But the last one was bad because when

(Testimony of Anthony Vitco.)

Mr. Mardesich came down in my bunk and saw me, then he called the broker to get the plane ready and then they took——

Q. You say he called. Do you mean——

A. Radiophone. We have a radiophone which you speak from shore to ship. And this particular broker happened to have the same thing on the shore. He can speak to the boats.

Q. I see. And after this attack you were taken in, is that right? A. Yes, sir.

Q. All right. Now, you were brought in. Was this the same broker at Manzanillo?

A. Same broker, same place.

Q. And how long after the attack, this last attack was [147] it before the boat started to go back?

A. I believe he went right away, sir. I am not sure, but I believe so.

Q. Then how long did it take to get in this time? Do you know?

A. There again I can't tell you how long. I don't say a day or two, but I don't know how long it took.

Q. During this time you stayed in your bunk, did you? A. That's right.

Q. When you got to Manzanillo what did you do?

A. They took me ashore. The broker had the ticket ready—yes, the broker had the ticket ready for the small plane from Manzanillo to Guadalajara, and he took me to the plane, the broker. And

(Testimony of Anthony Viteo.)

he had a wife and two children along. They took me to the plane, which is a little outside Manzanillo. And from there—the plane came in; in fact, the same time we did with the car. And I board that plane and went to Guadalajara.

Q. Now, how long after you got to Manzanillo did you leave on this plane? A. Not too long.

Q. What do you mean? Two or three days? Two or three hours?

A. No, no. Hours, not days.

Q. All right. And then when you got to Guadalajara [148] were you able to get on a plane right away?

A. No. There I was supposed—to tell you the truth, I was supposed to stay up for 12 hours in the lobby in the old hotel. I couldn't get the room. And I went through misery in that city. And then I wait for about 12 hours in Guadalajara, and I believe I board the plane around 6:00 or something—anyhow, in the morning, the next morning. I came in Guadalajara in the afternoon the previous day. I boarded the plane the next morning in Guadalajara and I got in Los Angeles airport around 6:00 or 7:00 or something like that. It took us, I guess, about seven hours.

Q. All right. Now, do you know what date it was that you arrived in Los Angeles?

A. I believe it must have been, Mr. Margolis, around—I am getting to where I haven't got much breathing system left in me.

(Testimony of Anthony Vitco.)

Mr. Margolis: I wonder if we could have a recess.

The Court: Oh, yes.

The Witness: I am getting tired.

The Court: You had better take a little rest.

Mr. Margolis: Can we have about five minutes, your Honor?

The Court: It is 25 minutes to 12:00. Do you want to resume?

Mr. Margolis: Could we perhaps have lunch now and come back a little early? Would that be convenient with your [149] Honor?

Mr. Sikes: If the court please, I have to see my doctor between 1:15 and 1:30 to talk to him for a few minutes before he takes the stand.

Mr. Margolis: Maybe we could resume at 1:30.

Mr. Sikes: I said between 1:15 and 1:30. I would appreciate it if the court would make it 1:45, sir.

The Witness: I am very sorry, your Honor.

The Court: You take some rest.

The Witness: I am getting to where I can't do too much more talking.

The Court: You rest during the noon recess. We don't want you to have an attack just to finish a court session. You take some rest during the noon recess.

We will recess until 1:45.

(Whereupon a recess was taken until 1:45 o'clock p.m. of the same day.) [150]

Thursday, February 24, 1955; 1:45 p.m.

The Court: Are there ex parte matters?

The Clerk: No, your Honor.

The Court: You may proceed with the case on trial.

Mr. Sikes: If the court please, may I call out of order my doctor here?

Mr. Margolis: No objection, your Honor.

The Court: You may.

Mr. Sikes: Thank you.

Dr. Bullock.

LEWIS T. BULLOCK

called as a witness by the respondents, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Lewis T. Bullock, L-e-w-i-s, B-u-l-l-o-c-k.

Direct Examination

Q. (By Mr. Sikes): Dr. Bullock, are you a doctor of medicine licensed to practice in the State of California? A. Yes, sir.

Q. Where did you receive your M.D.?

A. The University of Pennsylvania.

Q. And since you obtained your M.D. have you followed any particular specialty? [151]

A. Yes, sir. I am a specialist in internal medicine, with a primary interest in cardiology.

Q. Did you have any postgraduate studies in your specialty?

A. Yes. I spent two years at the Medical Cen-

testimony of Lewis T. Bullock.)

of Columbia University in New York City. When I spent a year at Harvard studying the circulation in the Physiology Department with Dr. Cannon. Then I came out and spent a year at the University of California Hospital in San Francisco under Dr. Kerr.

Q. Have you had any positions as a member of a society in connection with your specialty?

A. I am a former member, former president of the Los Angeles Heart Association. I am a former president of the California Heart Association, and on the board of the American Heart Association. I am at present a member of the board of directors of the California Heart Association. I am at present a member of the board of directors of the Los Angeles Heart Association. I am at present chairman of the Research Committee of the Los Angeles Heart Association, which spends the majority of the funds raised in the current campaign.

Q. Have you had any teaching assignments since you obtained your M.D.?

A. Since coming to Los Angeles in 1934 I have been on the faculty of the USC Medical School. I am now associate [152] professor of medicine at USC. I am also cardiac consultant at the Children's Hospital, where we also teach about heart disease in children. I am senior attending physician in the County Hospital and do a great deal of teaching there. I was formerly chairman of the medical staff at the County Hospital.

Q. The chairman of the staff——

(Testimony of Lewis T. Bullock.)

A. Medical section of the staff, yes.

Q. Now, Doctor, did you make an examination of Mr. Viteo, Mr. Tony Viteo? A. Yes, I did.

Q. Will you tell us first of all when you made your examination?

A. On August 26, 1953, and a few days thereafter. It took several days to complete it.

Q. Could you give us your best estimate as to how many days were necessitated for your examination, if you recall?

A. I would say three or four, but I don't remember. We see such patients and spend an hour with them on the first visit, and then various tests are done following that first visit, and then that is reviewed and analyzed, and sometimes that is done the next day or it might be a week later. I do not remember exactly the dates of appointments for the subsequent laboratory studies for X-rays and things of that sort. [153]

Q. Did you have an electrocardiogram taken of Mr. Viteo? A. Yes.

Q. Do you happen to have it with you, or the tracings from it?

(Whereupon the document was handed to counsel.)

Mr. Sikes: If the court please, Dr. Bullock has handed me two sets of tracings, each of which in turn consists of two pages and these are, as he has testified, those of Mr. Viteo, and I should like to offer them into evidence at this time, sir.

The Court: Is there any objection?

testimony of Lewis T. Bullock.)

The Witness: Your Honor, may I ask if I can be certain to get these back. These are my only records. They have not been reproduced. I would want to be very certain that my original office records are not taken permanently.

Mr. Margolis: I assume we will have a stipulation that all medical records may be photostated and substituted.

Mr. Sikes: I will stipulate to that at this time.

The Court: Photostatic copies may be placed with the clerk instead of the originals?

Mr. Sikes: Yes, sir.

Mr. Margolis: Yes, your Honor.

The Court: So ordered.

This will be Respondents' next exhibit in order.

The Clerk: C, your Honor.

The Court: C-1 and C-2.

The Clerk: C-1 and C-2 in evidence.

(The exhibits referred to were received in evidence and marked Respondents' Exhibits C-1 and C-2.)

Mr. Margolis: Could we have the dates on those, your Clerk?

The Clerk: August 26, 1953, would be C-1 and August 28, 1953, would be C-2.

Q. (By Mr. Sikes): Doctor, at the time that you examined Mr. Vitco on that series of dates here in August and after you had seen the electrocardiograms, could you give us your opinion as to whether the electrocardiograms were within normal limits?

(Testimony of Lewis T. Bullock.)

A. They were within normal limits. That is both before and after exercise. I should emphasize that one of these is taken with a very particular technique following strenuous exercise in order to bring out any abnormality that would not normally be shown. And so the two have to be interpreted with that in mind.

Q. Now, Doctor, have you had an opportunity to see Exhibits 3-A through, I believe, 3-F? It is a series of electrocardiograms taken by Dr. Abowitz from March of 1952 up through December of 1954. Have you had a chance to observe those?

A. Yes, I have. I assume you are referring to the ones I saw within the last hour on the table.

Q. Yes.

Mr. Sikes: I represent to the court that those were the exhibits to which I have referred.

Q. (By Mr. Sikes): Now, Doctor, have you also had an opportunity to see copies of the Coast Guard messages between the vessel Pioneer and the United States Coast Guard which are Exhibits 2—these are at least part of them. Have you had an opportunity—have you ever seen those, copies of them?

A. I haven't seen this form of it. I presume I have seen the same thing.

Q. I see.

A. I have another list here of messages which I presume is identical.

Q. All right. Would you care to take up the other list, and I will show it to counsel here.

(Testimony of Lewis T. Bullock.)

Mr. Margolis: If you tell me it's the same thing—

Mr. Sikes: It is the same thing, leaving out the technical terms. I will show it to counsel, with the court's permission.

(Whereupon the documents were shown to counsel.)

Mr. Sikes: May it be stipulated then, counsel, that Dr. Bullock has in his possession and is testifying from [156] copies of the messages which are contained in Exhibit 2?

Mr. Margolis: A quick glance so indicates, and will accept counsel's word for it.

Mr. Sikes: Thank you, very much.

Q. (By Mr. Sikes): Now, have you seen Exhibit 6, which is not the original, but is a photostatic copy of the electrocardiogram of Mr. Vitco at the United States Public Health Service in San Pedro on March 7, 1952?

A. Yes, I have. I have seen all of these exhibits you now refer to.

Q. Now, drawing your attention to Exhibit 6, which is the electrocardiogram taken on March 7, 1952, about five or six weeks after Mr. Vitco returned to the United States, will you tell us if in your opinion the electrocardiogram reveals the heart to be within normal limits?

A. I don't think one can say from reading an electrocardiogram that the heart is or is not within normal limits. I would say that the electrocardiogram in itself, this electrocardiogram does not

(Testimony of Lewis T. Bullock.)

prove the presence of any type of heart disease and it is within normal limits for an electrocardiogram.

I would agree with the conclusion that the Coast Guard made that these variable changes here are not specific. I find no reason for disagreeing with their conclusion on the subject. [157]

Q. Incidentally, I forgot to tell you that there is a part of that which really isn't in evidence. That is, this part under "Remarks."

Mr. Margolis: I am perfectly willing to stipulate that it may go in evidence.

Mr. Sikes: Well, it simply isn't in evidence.

Mr. Margolis: Yes. Counsel is correct. And I will stipulate, if you like, to the doctor's remarks concerning that which is not in evidence going out, if counsel wishes that stipulation. Otherwise, it should go into evidence.

Mr. Sikes: That's all right. I just wanted to tell him.

The Court: Do you wish the doctor's observations and conclusions stricken?

Mr. Sikes: No, sir.

Mr. Margolis: Then I think the whole document should go in evidence.

The Court: Then you may leave the door open for the "Remarks" to come in on cross examination.

Mr. Sikes: Well,—

Mr. Margolis: I don't want to take advantage of what happened, but if it is opened, I am going to take advantage of it.

Testimony of Lewis T. Bullock.)

The Court: Otherwise counsel couldn't cross examine on that phase of his answer.

Mr. Sikes: That's true. [158]

Well then, in view of that, may I move at this time, your Honor, that Dr. Bullock's remarks and his statement with regard to his conclusion concerning the diagnosis on Exhibit 6 be stricken?

The Court: Dr. Bullock's remarks as to his observations of the Coast Guard's conclusion. Is that it?

Mr. Sikes: Yes, your Honor.

The Court: Very well. That will be stricken. That is only a portion of the answer.

Mr. Sikes: Yes, sir.

Q. (By Mr. Sikes): Now, are the symptoms as set out by the captain of the vessel in the series of messages, Exhibit 2, are those consistent with an attack of pharyngo-esophagitis? A. Yes, sir.

Q. Are the symptoms as set out in those same messages—first of all, are they entirely consistent with a heart attack on the vessel?

A. There are certain aspects of them which are not consistent with a simple heart attack.

Q. And what are they, if you would care to go through them, Doctor?

A. Well, it refers to a "slight tickling in the throat," and we must of course always be cautious in interpreting this type of data because it is being transmitted through [159] non-medical people. But accepting it as a reliable description of the symptoms at the time, the primary symptom of a slight

(Testimony of Lewis T. Bullock.)

tickling in the throat would not be what one would expect a patient to have who was having a severe heart attack. The strangulation effect might be interpreted either way, as to whether one was having trouble swallowing or difficulty in breathing, it suggests difficulty in swallowing and strangling rather than a pain in the chest.

The emphasis upon fever and temperature would not be expected in the early stages, the first onset of a heart attack. And temperature would be incidental and minor compared to other major symptoms which a heart attack would produce.

I think those are the major things that would make one question the diagnosis of coronary thrombosis at that time as compare to an infection in the throat.

Q. Doctor, does penicillin—

A. May I mention one other thing? The position of the ailment is from the Adam's apple to the shoulder blade. That location of the trouble, "shoulder blade in the windpipe" would be a most unusual description of the trouble from a coronary thrombosis. Pains in the windpipe are unusual and not to be expected. A feeling that something is lodged in the windpipe would be inconsistent or unexpected; and particularly, I would emphasize the statement [160] in one of the messages that it is awfully hard for him to swallow. The difficulty in swallowing is a rather specific statement which would give strong evidence as to where the problem was, where the disease was, and would not be the

testimony of Lewis T. Bullock.)

normal symptom of a patient with coronary thrombosis.

Q. Doctor, does penicillin have any effect, any salutary or any other effect on a heart attack, some coronary attack?

A. We should define "heart attack." And assuming that we are referring to the one that is most widely known, that is a coronary thrombosis or a clot in a coronary artery, penicillin would have no influence one way or the other.

Q. If Mr. Vitco had in fact been suffering from some infection in the throat or gullet, would penicillin have any salutary effect on it?

A. Yes. It would be expected to cure it, or help—relieve it—be of great value in its treatment.

Q. Incidentally, at the time that you examined Mr. Vitco in August of 1953, was there any sign at that time that he was suffering from any type pharyngo-esophagitis? A. No.

Q. Now, taking the series of electrocardiograms, A, -B, -C, -D, -E, -F, -G and -H—I believe—those that were made by Dr. Abowitz, you stated that you have looked at those, haven't you? [161]

A. Yes.

Q. Will you tell us your opinion as to what they reveal over a period, over the period covered hereby?

A. They reveal records which are within the limits of normal variations. There are some questionable changes that vary back and forth from

(Testimony of Lewis T. Bullock.)

time to time. None of these are definitely within the normal limits. There is no conclusion that one could reliably draw from this series as to the definite presence of any type of heart disease.

Mr. Sikes: If the court please, sometime ago I sent to Dr. Bullock a copy of the deposition of Mr. Mardesich, one of the respondents. That is not admissible here and I well realize it. I am going to phrase a question which will carry several assumptions in it which I later intend to prove by Mr. Mardesich, and I wanted to preface my question with that remark, that these assumptions are in there, and the basis of the question, and that if they are not brought out by the evidence then it is obvious that Dr. Bullock's opinion on that particular point, based thereon, will be of no value.

The Court: Since you called Dr. Bullock out of order I suggest you put your question, and perhaps Mr. Margolis would be willing to forego the objection upon the representation that those assumed facts will later be placed in evidence.

Mr. Margolis: I don't think we have the same problem here as we do in a jury trial, your Honor. I am perfectly [162] prepared to assume that if there is no foundation your Honor will disregard the answer.

Mr. Sikes: Thank you, your Honor. And thank you, Mr. Margolis.

Q. (By Mr. Sikes): Taking into consideration your views of and your inspection of the series of electrocardiograms, 3-A through 3-H, and taking

estimony of Lewis T. Bullock.)
to consideration your inspection and analysis of
contents of Exhibit 2, the Coast Guard mes-
res; and taking into account your own electrocar-
grams, Exhibits C-1 and C-2; and your own
er physical examination of Mr. Vitco; and as-
ning that Mr. Vitco on the incident of his first
ack on board the Pioneer, this vessel, he said
t he was sick and he did not feel right; and
rther that he did not say that he was dying but
t he thought there was something wrong with
throat; and that he, Vitco, noted—no, that he,
teco, said he had a slight tickling in his throat,
d on that day his temperature picked up in the
se that it increased; and that the position of the
ment was from his Adam's apple to the shoulder
de in the windpipe; and that some three or four
ys later, after waiting in Magdalena Bay Mr.
teco said that his throat was bothering him, and
suming that he was examined in Manzanillo on
about January, somewhere between the 24th and
h, by a Mexican doctor who diagnosed his condi-
n as pharyngo-esophagitis; and assuming, fur-
er, that Mr. [163] Vitco never said anything at
specifically about difficulty with his chest or his
art; and assuming, further, that Mr. Vitco ex-
essed a desire not to return to the United States;
d assuming further that the visit to the Mexican
ctor was at the insistence of Mr. Mardesich, the
ipper, and not at that of Mr. Vitco; do you have
opinion, Doctor, based on all of those things, as
whether Mr. Vitco had a heart attack or a series

(Testimony of Lewis T. Bullock.)

of them on board the Pioneer or some other vessel in January of 1952?

Now, just hold it one second, Doctor. Mr. Margolis has stood up.

Mr. Margolis: I think, your Honor, there are many objections to the form of the question, but I am not going to make any of them except one, and that is the assumption relating to the diagnosis of a doctor in Mexico, on the grounds that that would be meaningful only if he was told everything about what that doctor had done, to arrive at that diagnosis and the basis therefor. The mere fact that a doctor in Mexico had made that diagnosis——

The Court: I will say this much, that the facts in evidence—the deposition is here, Mr. Sikes, but when you interpolate one doctor's opinion into a hypothetical question seeking another doctor's opinion, it seems to me you are not only unfair to the doctor on the stand but you are destroying the usefulness of his opinion. [164]

Mr. Sikes: All right. Then with the court's permission——

The Court: Because you are asking him to predicate an opinion upon an opinion.

Mr. Sikes: Then with the court's permission may I say this, without the necessity of repeating that entire question to Dr. Bullock,——

Q. (By Mr. Sikes): Will you exclude from any consideration whatsoever the diagnosis allegedly made by the Mexican doctor, and then after excluding that from all of this other evidence, do you have

(Testimony of Lewis T. Bullock.)

What is your opinion as to whether Mr. Vitco suffered a heart attack on board this vessel in January of 1952?

A. Yes.

Q. What is your opinion?

A. I do not think that he did. And I am certainly not able to find any evidence to prove that he did.

Mr. Sikes: You may cross examine.

Mr. Margolis: There will be a point, your Honor, at which I will ask to examine the doctor's records. But I think that can be done during the recess, and I can proceed with examination in the meantime.

The Court: Very well.

Is Exhibit A to the deposition of the Mexican doctor in evidence?

Mr. Margolis: Yes, your Honor. But your Honor will [165] recall there was a question of preservation as to an objection. It is in evidence and I have no objection to your Honor considering the whole——

The Court: I haven't examined it as yet.

Mr. Margolis: There is no objection to it, of course, but I do want to make it clear that I think there are objections to portions of it. Incidentally, any objections may end up as only going to the effect of the deposition rather than its admissibility.

The Court: Very well.

(Testimony of Lewis T. Bullock.)

Cross Examination

Q. (By Mr. Margolis): Dr. Bullock, one layman's translation of another layman's symptoms you would not consider very reliable, would you?

A. One uses it with considerable hesitation and care and caution and judgment.

Q. And a much better basis for determining what was wrong with a man at a particular time is for a doctor to examine him and to ask him about the symptoms that he suffered at that time, because the doctor knows how to extract the correct information, isn't that so? A. Yes, sir.

Q. Now, Doctor, if upon such an examination the man gave you a history that at the time of those attacks that [166] we are talking about he felt the oppression of death, he felt the impendency of death, and that he had a pressing and crushing pain in his chest, and that this pain radiated out to his shoulder and arm, that would considerably affect your opinion, would it not, Doctor?

A. Yes, sir.

Q. And if you had that kind of a history your conclusion would be that probably there was a heart attack, isn't that so?

A. That history sounds very typical and classical of a heart attack.

Q. Now, Doctor, is the term pharyngo-esophagitis, is that term commonly used in the United States?

A. Well, it would not be unusual. We call it a strep throat or a pharyngeal abscess or a paritonsil

(testimony of Lewis T. Bullock.)

process or symptom. They are all referring to the same thing.

Q. Well, that's the first part. That's the sore throat part. The esophagitis has nothing to do with the throat, has it?

A. Well, it would be the upper part of the esophagus, and I am sure he would be referring to what we call the paritonsilar abscess, I am sure.

Q. That is your interpretation of what it means. But, typically, esophagitis is a disease or illness of the esophagus and originates much lower down than the throat, [167] isn't that right?

A. Well, the esophagus connects with the throat, and when the throat is involved the upper part of the esophagus is almost always involved to some extent. And so the term would refer—when you say both you don't say how far down the esophagus you go, but the thing you see very frequently is an inflammation at the border line, too, which is a very frequent disease. It's not unusual.

Q. What are the typical symptoms of this disorder?

A. Sore throat and fever—difficulty in swallowing.

Q. Anything else?

A. Those are the major things. Increased white count. The throat would be inflamed and infected if you looked at it.

Q. It doesn't involve recurrence of severe attacks, does it?

A. A paritonsilar abscess may very well, par-

(Testimony of Lewis T. Bullock.)

ticularly if it is not treated properly originally——

Q. Paritonsil abscess? A. Yes.

Q. Is that the same thing as this other thing we are talking about?

A. Yes, they are all within the same group of terms.

Q. Well, if you saw that sort of an abscess and you were making a diagnosis, you would call it that, would you [168] not?

A. Well, it would be a subdivision of the same term. The terms used by different physicians in different countries may vary slightly, all within the same group.

Q. Well, not every pharyngo-esophagitis involves an abscess, does it?

A. Not necessarily.

Q. So that is just simply an assumption that there is an abscess as part of that?

A. That's right.

Q. You are simply assuming that if there were an abscess there could be recurrent attacks, is that right? A. Yes.

Q. What would be the nature of those attacks?

A. Recurrent pain and tickling in the throat and possibly fever and possibly difficulty in swallowing.

Q. That is all? A. Yes.

Q. You wouldn't have recurrent attacks in which a man couldn't catch his breath, and afterwards could catch his breath?

A. You could very well have difficulty in breath-

(Testimony of Lewis T. Bullock.)

ing with it; the same as difficulty in swallowing.

Q. You mean a man could go through an attack which he just couldn't catch his breath and then it would subside [169] and then a couple of hours later there would be another attack and this would be a sort of symptom you would expect from this type of disorder, Doctor?

A. It would be perfectly possible.

Q. It wouldn't be very likely, would it, Doctor? Have you ever seen that? A. Yes.

Q. You have?

A. Let's say that difficulty in breathing, difficulty in swallowing is frequently a characteristic symptom of a severe infection in the throat, usually associated with an abscess at the time. And those symptoms are not constant. They will be bad and varied to some extent. It is not characteristic of sudden severe attacks and then going away.

Q. That is not characteristic? A. No.

Q. Where you have a sudden severe attack and when the man goes to sleep and feels pretty well and then you have another sudden severe attack. That isn't characteristic, is it, Doctor?

A. Not to keep on doing that, no. It might come back after some days or—

Q. But that is characteristic of a heart attack, isn't it, Doctor? I mean, it is the sort of a thing that is certainly not unexpected in a heart condition. [170]

A. Yes. We need to define the frequency and times and durations of these attacks, and I am get-

(Testimony of Lewis T. Bullock.)

ting a little confused as to exactly the duration and frequency that we are referring to and whether we are referring to coronary thrombosis or angina; and the two are quite different.

Q. Well, let's encompass within that any kind of a heart condition. I am talking about any kind of a heart condition.

There are heart conditions, are there not, in which a man will have an attack that might last 10 minutes, or so, 15 minutes, and then subside, and then a few hours later, will have another severe attack, and then he will be relatively free of the attacks, is that right?

A. That is characteristic of angina pectoris, yes.

Q. And not characteristic of the esophagitis?

A. No, not to be completely free. If we assume complete freedom of any symptoms between, it would not be consistent with esophagitis.

Q. Now, I think you said that penicillin would help the esophagitis—

A. Yes.

Q. —over a period of time.

Now how long would it take before it did any good?

A. Well, that would depend upon the severity of the infection; the sensitivity of the particular bacteria [171] producing the inflammation of the throat and upper esophagus; and the dose of penicillin.

Q. What is the minimum time?

A. And the individual.

Testimony of Lewis T. Bullock.)

Oh, it could make a great deal of difference in five or six hours.

Q. But it couldn't do anything in 15 or 20 minutes? It could have no effect at all, could it, Doctor?
A. In 10 minutes?

Q. 10 minutes or a half hour. A. No.

Q. None whatsoever? A. No.

Q. Now, if the penicillin reduced the temperature and there was an esophagitis condition, you would expect the symptoms to quiet down, wouldn't you?

A. You would expect them to improve.

Q. You would expect them to improve. You wouldn't expect the symptoms to get worse, would you?
A. No.

Q. So that if following the penicillin the choking gets worse, although the temperature goes down, that's a sign, is it not, Doctor, that the symptoms are not attributable to esophagitis but to something else?

A. And one would think that something else was in [172] abscess which was not drained.

Q. Could it be also a heart condition?

A. Well, anything could be.

Q. Well, not anything, Doctor. Isn't that the sort of thing that if you had a heart condition and you treated it with penicillin and you also had fever, the fever might go down but the symptoms of the heart condition, such as strangulation, might get worse?

A. If the fever were due to a heart condition

(Testimony of Lewis T. Bullock.)

the penicillin would not reduce the fever. It would have no influence on it.

Q. But, Doctor, it is entirely possible, is it not, that a man having a heart condition could also have a sore throat? A. It is possible.

Q. It is possible? A. Yes.

Q. It wouldn't be at all extraordinary or remarkable if that were to occur, would it, Doctor?

A. It is possible. It would be unusual for them both to develop at identically the same time.

Q. Well, unusual merely in the sense that it would be a coincidence, isn't that right? One isn't inconsistent with the other, is it?

A. It's not impossible. [173]

Q. Well, is one inconsistent? Does the fact that you have a sore throat make it less likely that you would have a heart attack.

A. It is not impossible.

Q. Doctor, answer my question, please. Does the fact that you have a sore throat make it less likely that you are going to have a heart attack?

A. If you have certain symptoms developing and you assume those symptoms are due to separate and unrelated conditions, it's medically a basic fact that you will most likely be wrong and you are betting on a percentage chance that is so far off that no diagnostician will accept that unless the combination of most unusual circumstances is supported by reliable evidence.

Q. Doctor, I wonder if you could answer—I am a little lost. I am sorry.

Testimony of Lewis T. Bullock.)

Could you answer this question yes or no, and then explain it: Is a man with a sore throat less likely to have a heart attack than a man who does not have a sore throat? A. No.

Q. So that if a man has a sore throat, the penicillin might help the sore throat and not help the heart condition at all, is that right?

A. Yes.

Q. And if the temperature was due to the sore throat [174] under those circumstances the penicillin might reduce the temperature, but the symptoms which flowed from the heart attack would themselves be continued, persist, or might even get worse, is that right?

A. That would be possible.

Q. Whereas if, otherwise, you would expect the penicillin to help the condition overall. Right?

A. If you gave enough and kept it up long enough. But you don't cure them all with just any dose.

Q. I said "help." You would expect the penicillin to help the condition overall? A. Yes.

Q. Now, Doctor, angina pectoris is a particular type of pain which is brought about by a sudden lack of blood in a portion of the heart, isn't that right, Doctor? A. A certain relative lack.

Q. Relative, yes. And it may be due to any one of several different causes, isn't that right? I mean, for example, there might be a blockage or there might be simply a spasm which causes it, isn't that right?

(Testimony of Lewis T. Bullock.)

A. Those two things could cause it. If you had a blockage it would not be angina. It would be called a different term and a different name when it is completely blocked. Angina refers to a temporary change and not to occlusion of the artery.

Q. It is a fact, isn't it, that angina is sometimes used in different senses? It is sometimes referred to and sometimes to what is really a disorder in and of itself. But classically it refers basically to the pain rather than to the symptom of disorder, isn't that right, to the heart pain?

A. With the exception that the pain of a very similar character is produced by a clot forming in the artery which is called coronary thrombosis. And the picture of the pain and the diagnosis and the terms used for the pain produced by an actual thrombosis, an obstruction, is different from that of a temporary spasm in which we more characteristically use the word angina. And I would be clear as to what we were referring to if we maintain that distinction.

Q. All right, Doctor.

Now, it is true, isn't it, that many patients with coronary artery disease will have it for years without presenting any objective evidence of the disorder, or even sometimes without a pain?

A. Oh, yes.

Q. So simply the fact that there is no objective evidence of angina pectoris does not necessarily lead to the conclusion that it doesn't exist, is that right?

(Testimony of Lewis T. Bullock.)

(No response.)

Q. Well, the lack of objective evidence of angina [176] pectoris does not necessarily lead to the conclusion that it does not exist, is that right?

A. Your question is a little confusing to me, because I am not sure that we are agreeing on terms.

Angina pectoris is, by definition, the symptom of pain. I think you are referring to the cause of that, that is, coronary arteriosclerosis, which may be present without any objective symptoms or any objective findings. And that may be present for a long period of time before symptoms develop. Since we limit the diagnosis angina to the person who has pain, we can't have that diagnosis made without the presence of the symptom. But we can have the preliminary preceding organic change in the artery, that is narrowing, to some extent narrowing, and the development of arteriosclerosis for a long time before any temperature develops.

Q. And it is also true, isn't it, Doctor, that the pain, angina pectoris, may arise long before there is any objective showing of the cause of that pain?

A. Yes.

Q. Now, that's a pain that is usually felt under the sternum, isn't it, Doctor, the pain of angina pectoris; and the chest—the man feels a pressing, crushing down on his chest? A. Yes.

Q. And sometimes it gets up around the neck, isn't that [177] right?

A. It may radiate to the neck.

(Testimony of Lewis T. Bullock.)

Q. It gets up around the neck so that a layman might refer to it as being the windpipe?

A. He might.

Q. And it gives rise to a sense of choking or suffocation or strangulation, is that right?

Mr. Sikes: I am going to object to that question on the grounds, your Honor, that it is very confusing. There are three symptoms described in the disjunctive.

The Court: The doctor will be able to answer. Overruled.

The Witness: Choking is an unusual symptom—it is rare that I ever hear patients use that word. Strangulation—I don't remember any patient using the term. They have a feeling of suffocation and difficulty in breathing and they are very short of breath and they are obviously struggling to breathe; but in the absence of extreme dyspnea they don't use the words "strangulation" or "choking."

Q. (By Mr. Margolis): That is the sort of a term that a layman describing what he saw happening to somebody else might well use, isn't that right? A. It would be possible, yes.

Q. And shortness of breath, the sort of difficulty of catching your breath, is virtually always one of the symptoms, is it not?

A. It very frequently and usually is. And we are now [178] referring, however, to coronary thrombosis and not angina, and we must constantly distinguish between those two. Shortness of breath does not occur in angina.

estimony of Lewis T. Bullock.)

Q. Doctor, do you predicate that upon your own experience alone, or upon your own experience and what the authorities say on the subject?

A. Oh, that is generally accepted. And we are confusing two conditions here, I think, is where the trouble is arising.

Q. Are you, Doctor, in this connection familiar with, and do you rely to any extent in giving your opinions upon the works of Boaz?

A. Well, having seen several thousand patients, I don't need to read Boaz.

Q. You don't depend on Boaz at all? He is considered one of the leading authorities in the field, is he not?

Mr. Sikes: I am going to object to that, your honor, on the grounds that it is immaterial. The doctor has already stated he does not rely on Boaz and, therefore, this type of cross examination is immaterial and not proper.

The Court: Sustained.

Would your terminology be easier, Doctor, if you simply referred to "heart failure" or "heart disease"?

The Witness: No, sir. We have to distinguish between angina and coronary thrombosis; and have to be specific as to which we're referring to when we are talking about the [179] symptoms which may be present. And the symptoms are entirely different in the two. I will be glad to elaborate at further length to clarify that problem, if you like.

(Testimony of Lewis T. Bullock.)

The Court: Suppose you tell us, if you will, the differentiation between the two.

The Witness: Angina pectoris is a condition due to narrowing of the coronary artery. The artery——

The Court: Pinching off of the blood supply to the muscle of the heart, is that it?

The Witness: Yes. Let's say the coronary arteries come off above the heart and run over the surface of the heart and transmit blood to the heart muscle. They are particularly subject to hardening or thickening of their lining, so that the inner opening narrows down and becomes very small. The artery becomes rigid and hard.

Now, the normal artery when the patient exercises is flexible and will increase and the flow of blood will considerably increase, so that the heart gets enough blood not only to carry on at rest but also at exercise.

Now, however, if this process of hardening and narrowing of the opening has occurred and that patient may be perfectly comfortable and have no symptoms, but if that patient exercises and the need for oxygen in the heart muscle increases, the opening is rigid and cannot change and so the heart then suffers from a relative lack of oxygen and pain develops [180] during the exercise, which is promptly relieved by just stopping and standing still. And it goes away. And that attack may last a few minutes, five minutes or 10 minutes. It may come back whenever he exercises again, or if he gets excited or anything that increases the need on

estimony of Lewis T. Bullock.)

the part of that heart for any further blood. And that process of pain, intermittent, going on for a long period of time, may occur over a period of years, several years. That is not associated with shortness of breath, because the pain starts, and he can't exercise enough to get short of breath. As soon as he starts exercising this crushing pain starts and he stops with the pain. There is no fever associated with it. It's a temporary, primary pain called angina pectoris.

Now, that same artery which has been narrowed so has its opening, its lining roughened. That inner lining is then particularly subject to the development of a clot or thrombosis. Then when that clot starts to develop it develops rather suddenly, within a few minutes, a short while, and completely clogs up that artery, blocks it. That is called coronary thrombosis. That is an actual obstruction of the artery.

Now, that is a much more serious, much more severe, much more dangerous problem. That is what is called the severe heart attack, what people refer to. The result depends on how large an artery is clogged up; how much muscle [181] was supplied by that artery. Assuming that it is a moderate-sized artery and a fair portion of the heart muscle supplied by it, that person is suddenly hit with an extremely severe crushing pain; he becomes very short of breath; often becomes blue and may die if the artery is big enough, just drop dead like that. There is no fever following that as that muscle is de-

(Testimony of Lewis T. Bullock.)

stroyed, assuming that it is not too large and the patient does not die immediately, the patient is then put in the hospital and the shortness of breath lasts for hours or days. He is usually then put under oxygen. The fever will come up within the next two or three days after the attack of severe pain. The electrocardiogram will show characteristic changes, which I am sure we will discuss later, showing the development of actual destruction of muscle. The muscle supplied by that artery is completely deprived of blood. It has no more blood. It is going on moving. It actually dies and is destroyed just as effectively as if you would put a red hot iron on it. It is killed.

Over a period of weeks and months that dead muscle is then slowly, gradually absorbed by the blood, replaced by scar tissue, and in time, after six weeks, that damaged muscle may be completely replaced by scar tissue. That patient may then get up and go about and return to relatively normal activity.

The symptom of prolonged pain, shortness of breath, of [182] fever, all of that is typical of obstruction, but is not typical of temporary spasm or temporary relative lack of oxygen which occurs in angina.

Q. (By Mr. Margolis): Doctor, I may have put my question to you a little inaccurately, and I want to give you a statement and ask you whether this is a correct statement with respect to angina pectoris.

Testimony of Lewis T. Bullock.)

“With the pain there comes a sensation of inability to breathe. The patient describes this as shortness of breath; but there is no panting, no true dyspnea; it’s rather as though the breathing had become arrested and it were impossible to draw air into the lungs. The sensation of suffocation or inability to breathe may be the sole symptom.”

Now, is this a correct statement with respect to angina pectoris?

A. All I can say is that I have never seen a patient in the thousands that I have seen who was proven to have angina, whose only symptom was difficulty in breathing, without the pain.

Q. Have you seen them where that was one of their symptoms?

A. It might be possible for some people to talk about breathing, but I would emphasize the statement that there is no real shortness of breath, no real dyspnea.

Q. But the patient describes it as that, and the reason [183] he describes it as that is because that is his reaction to it, isn’t that so, Doctor?

A. Under very rare and unusual conditions it might be so.

Q. Doctor, do you rely at all upon any authorities for that statement? Do you know of a single authority that backs that up, outside of your own experience?

A. It’s the generally held opinion, I would say.

Q. Can you give me the names of any books or

(Testimony of Lewis T. Bullock.)

writers who say that the sensation of inability to breathe is not common in angina pectoris?

A. I would say that. I told you before that I based my opinion upon the observations of many thousands of patients and not upon what somebody else said.

The Court: Have you expressed it as your opinion, Doctor, that the sensation in the patient of shortness of breath or inability to get their breath, as a layman would say, is not a symptom of angina?

The Witness: It would be extremely unlikely. They complain of pain; just a pain. The name of the disease itself "angina," means pain. And that is far outstanding.

Now, in medicine it is always difficult to say that nothing cannot happen. But when it might occur one in a thousand or five thousand patients, one looks upon it with a considerable degree of skepticism and says, "Well, it might [184] occur," but one would look very hard to find some explanation of that. It's not what normally occurs in many, many patients with this problem. Dysnea is not the symptom. The symptom is pain.

Q. (By Mr. Margolis): Well, I am not talking about just something that happens in an isolated case, one in ten thousand times. I suppose almost anything could happen once in ten thousand times. But I am talking about this as a typical symptom. You have done a great deal of studying in the field, haven't you, Doctor? You have read a great many books?

A. Yes, I have.

(Testimony of Lewis T. Bullock.)

Q. Can you recall a single authority that agrees with you, with your experience, that this is not a typical symptom?

A. I did not look that up particularly, since I thought my position here was to give you the benefit of my experience rather than quote books for you. I can get books if you want me to.

The Court: Doctor, if the patient had this pain which Mr. Margolis described to you, and accompanied by a sensation of suffocation or shortness of breath, would it be your diagnosis that he had some heart trouble of some kind, a heart attack of some kind, as the layman puts it?

The Witness: If he had the pain.

The Court: If he had the pain which has been described to you, plus the sensation of suffocation.

The Witness: If the patient had the pain which was described, of a severe, crushing, precordial in nature, radiating from there to the arm, and was also accompanied by shortness of breath, I would think he had the clot, the coronary thrombosis.

The Court: Rather than angina.

The Witness: Yes.

The Court: And if this pain radiated into the left arm, down as far as the left wrist, and did not enter the right arm at all, would your diagnosis be the same?

The Witness: That would be quite characteristic of coronary thrombosis.

The Court: Rather than angina.

The Witness: The dysnea would make me—as

(Testimony of Lewis T. Bullock.)

soon as they start having shortness of breath, you think there is actual shortness of heart muscles and a clot, rather than simple spasm.

The Court: And sometimes those attacks, two or three follow each other, is that right?

The Witness: You may have one, two or maybe three; usually not more than two. They may occur within a week.

The Court: Week or two?

The Witness: Part of the same general set-up. In other words, that clot may spread a little bit. It may start in a small artery and may spread a little bit. So you may have a recurrence of the major attack. [186]

The Court: You may have a major attack and then two minor ones?

The Witness: Usually not two. You may have one additional one. Actually, you usually have the minor one when it is in the small artery, and then a few days later the major one comes into play. But my position is the shortness of breath makes me think it is coronary thrombosis rather than angina. And I think we are debating about the use of terms.

Q. (By Mr. Margolis): In any event, it is a typical feeling of a person having some sort of heart trouble?

A. Of a typical type of heart trouble. It is characteristic of coronary thrombosis.

Q. Now, it is true, also, is it not, Doctor, that not every heart attack—not even every coronary thrombosis is accompanied by alterations in the elec-

testimony of Lewis T. Bullock.)

Q. ECG? A. That is correct, yes.

Q. So that actually in diagnosing a heart condition, actually history is the most important single factor, isn't it, Doctor?

A. Well, no. One has to consider every bit of information you can get. And I don't think one would say anything is more important than the other.

Q. In any event one couldn't pick up an electrocardiogram and say the electrocardiogram is completely normal, 100 per cent normal, and therefore I know he doesn't have a [187] coronary thrombosis. A. That's right.

Q. Or angina pectoris. One could not say that?

A. No, sir.

Q. And also, it is true, is it not, Doctor, that there are areas of the heart where the electrocardiogram is far less effective than other areas with respect to revealing the nature of the damage?

A. That is correct.

Q. So that if it is up around the back and high, you would expect probably less results on your electrocardiogram than if it was down low enough in front where your electrocardiogram could get the sensations rather fully, is that correct?

A. That is correct.

Q. So that actually you have to look at all variations in the electrocardiogram, all variations from the norm in the electrocardiogram and consider them in the light of the history of the patient.

A. That is correct.

(Testimony of Lewis T. Bullock.)

Q. And sometimes the fact that the deviations from the norm in the electrocardiogram are what might fall within normal limits, what might in some cases be indicative of nothing because there were no accompanying symptoms or no accompanying history, would, with a certain kind of history [188] and certain symptoms, be indicative of some sort of heart trouble, isn't that right, Doctor?

A. Yes. You could have a perfectly normal electrocardiogram and the patient still have had in the past a heart attack. And, also, the timing is a factor there. In other words, the closer you get to it the more likely it is to show. And it is quite possible that the electrocardiogram would show evidence of the attack at one time and it might not show later on.

Q. It might show it within a couple of days of the attack, and might not show it two months later?

A. Well, it is usually several months later. But it is possible for the evidence, for the signs to go away.

The Court: After a coronary thrombosis, Doctor, how long does it take for the repair, as a rule, to take place; the repair in the muscle that you describe?

The Witness: About six weeks. And so it is standard treatment to keep the person in complete bed rest for six weeks.

Now, it is not possibly completely repaired and they are kept off of normal activity for three months. And the electrocardiographic changes will

testimony of Lewis T. Bullock.)
w the scar. And so that is often permanent. And
e changes usually show for a much longer pe-
l of time. We have to distinguish between the
lacement by scar and the return of the electro-
diogram [189] to normal, which actually usually
sn't occur. I just state that it might occur and
to be considered in evaluating a problem of this
t.

Q. (By Mr. Margolis): There are some kinds
heart attacks that will disable a person from
normal activity for the rest of his life, aren't there,
doctor?
A. Yes.

Q. Now, Doctor, one of the things that you
uld expect in a normal electrocardiogram would
hat if there were slight deviations from 100 per
t—

Mr. Margolis: I want to withdraw the question
rephrase it.

Q. (By Mr. Margolis): One of the things that
would expect in an electrocardiogram of a nor-
person as far as his heart is concerned would
hat even though there were deviations from 100
cent norm in the tracings, those deviations
uld be pretty consistent, isn't that right, Doctor?
n other words, you would take a half dozen
G's over a period of time and you would expect
ind pretty much the same deviations at all times
that person that does not have a heart condi-
t.

A. No. Some are and some are not. It would

(Testimony of Lewis T. Bullock.)

vary depending upon which ones you are talking about.

Q. Isn't it particularly true with respect to the [190] T-Wave and the S-T Segment?

A. Well, one thing I think for instance that will affect it and cause it to change from one minute to the next is a change in position of breathing, the change in position of the heart. You can have changes from one minute to the next very rapidly.

Q. So that if a doctor when he takes the electrocardiogram takes it in various positions, and yet on the basis of the comparison of positions the changes remain constant, then he can be sure, can he not, or reasonably sure as a doctor can be, that the changes in the electrocardiogram are not due to changes in position?

A. Within a given set of changes, I could tell you whether that is within the normal variations or not.

I must emphasize that one must be acutely aware of the normal changes that do occur from day to day, depending upon the alkaline status of the blood, type of respiration, position of the heart and many other things. So I am not quite sure what variations you refer to. If I could see them on the record I could tell you whether they are normal variations or not.

Q. You wouldn't expect the T-Wave on one electrocardiogram, say in Lead 3, to be isoelectric—that's level one time, inverted another time and extending upward another time, would you? [191]

(Testimony of Lewis T. Bullock.)

A. I wouldn't be at all surprised. I can show you many records from one minute to the next you can change that by just by changing the state of respiration. And unless you can standardize the exact position of respiration, how deep the breath is, you can change it instantly. You can just change it back and forth every five minutes; particularly in Lead 3. And I can tell you why.

Q. Assume the same position, Doctor, and the checking of this in various positions; and also assume that the electrocardiogram is taken with a breath taken in the middle on Lead 3. That is the common way of taking it, isn't it, Doctor, so that you can judge? That is a factor?

Assume those things, and still assuming that with those precautions taken you still find these changes in the T-Wave, would that be at least a pretty suspicious circumstance, Doctor?

A. It would determine upon the degree of the type, and circumstances. One approaches T-Wave changes in Lead 3 with a great deal of skepticism because they are normally inverted in a large proportion of people. The T-Wave, you pay very little attention to it in Lead 3 because it normally varies up and down.

Q. Doctor, is that as far as you know, or are you relying again entirely on your own experience or are you relying on authorities? Can you give me any authorities to [192] support that proposition, Doctor?

A. I rely upon the same experience.

(Testimony of Lewis T. Bullock.)

Q. Just your own experience?

A. And the fact that I have read many, many books and——

Q. All right. I won't bother you any more about it.

A. ——have been in conferences with many, many of the experts in the country and it is my concept that that is the generally held opinion.

Q. But you can't give me anything specific?

A. No.

Q. You wouldn't care to cite any authority that you would consider that you would be willing to accept on that proposition?

A. I quote Dr. Bullock.

Q. Who? A. Dr. Bullock.

Q. Dr. Bullock. All right. That is who we have here. Have you written any books on this subject?

A. No.

Q. Now, it is also true, is it not, Doctor, that nitroglycerin relieves the pain of heart attacks. It sometimes tends to eliminate it altogether and sometimes just relieves it, is that true?

A. Of angina. Not of coronary thrombosis.

Q. All right. Of angina. Does it give any relief for [193] coronary thrombosis?

A. For practical purposes, no.

Q. All right. Now, if nitroglycerin is used by a patient and it gives him relief when he has these pains, isn't that itself a diagnostic measure, Doctor?

A. It is one of the points in a diagnosis that carries some weight.

(Testimony of Lewis T. Bullock.)

The Court: Doctor, from the symptoms you described would you expect or would you be surprised that the same person might have both. That is, he might suffer from angina and also have a coronary?

The Witness: The person who has had a coronary thrombosis in the past not infrequently has angina subsequent to that. And, of course, as I described it, a person who has angina is the one who is likely to get a coronary thrombosis. But in treatment and handling and symptoms one very carefully distinguishes between the two, because a coronary you put right to bed. In angina you let him go continue to walk around and continue to work.

The Court: But if a victim of coronary thrombosis shows symptoms of angina you might prescribe for him some nitroglycerin?

The Witness: Oh, yes. A patient with one—angina may go into coronary thrombosis and coronary thrombosis may be followed by angina, and the angina would then be treated [194] by nitroglycerin; and nitroglycerin, characteristically, relieves the pain of angina, although it relieves quite a number of other pains, too. That is not the only one it relieves by any means.

The Court: It achieves this relief by relaxing the muscles, does it, or relaxing the arteries?

The Witness: Well, sir, theoretically it achieves this relief by dilating the coronary artery; and it does that despite the fact that I have just previously said that that artery is so rigid and hard it won't dilate very much. So there is a little incon-

(Testimony of Lewis T. Bullock.)

sistency in our knowledge of the subject. We know it does. And somewhere or other there seems to be spasm in the artery in addition to the narrowing that causes the angina and it relieves the spasm of the artery and opens it up and lets more blood flow through it. It will relieve the spasm of any voluntary muscle. For instance, a gallstone attack is also helped by nitroglycerin because it relaxes the spasm around the stone.

Mr. Margolis: Also kidney stones, as I can personally vouch for.

Q. (By Mr. Margolis): Now, you said that when a person has angina pectoris you don't necessarily put them to bed like a person with a thrombosis?

A. No.

Q. However, the point is, it is a fact, is it not that [195] a person who has angina pectoris will have, ordinarily, a limit to the activity in which he can engage without pain? A. Yes.

Q. For example, he may be able to walk two blocks on the level without pain or one block or five blocks or he may be able to walk on the level and not walk upstairs. Or he may be able to do ordinary work which doesn't require lifting and may not be able to do lifting. There are variations, isn't that right? A. Yes.

Q. And proper treatment of angina pectoris is to keep the activity below the level of pain.

A. That is correct. That is part of it.

Q. If it hurts him to walk one block he shouldn't walk one block.

Testimony of Lewis T. Bullock.)

A. At a given rate. It is more a matter of speed at which he walks that block.

Q. Yes. Or I mean—let us say if it hurts him to walk up a flight of stairs he shouldn't walk up that flight of stairs.

A. That is correct.

Q. And if it hurts him to engage in a certain activity it is harmful for him to engage in that activity.

A. Yes.

Mr. Margolis: I would like now, if your Honor please, to [196] have a look at the doctor's records, if I may.

The Court: Very well. We will take the afternoon recess for five minutes.

(Short recess.)

Mr. Sikes: May I address the court for one second, sir?

The Court: You may.

Mr. Sikes: I have in my hand Exhibit C-1 and Exhibit C-2, which are Dr. Bullock's photostatic copies and his yellow office copies, and I have in the meantime found in my file the originals thereof, and I would like to substitute the original for the copies. And he can retain his office copy.

The Court: Is there any objection?

Mr. Margolis: No objection.

The Court: You may hand the originals to the clerk and withdraw all copies.

Mr. Sikes: All right, sir. Thank you. And I assume they may carry the same identification exhibit number.

(Testimony of Lewis T. Bullock.)

The Court: They will be merely substituted for the copies in evidence.

Mr. Sikes: Yes, sir.

The Court: Gentlemen, I won't be able to hear this case tomorrow afternoon. If we don't finish by tomorrow noon I don't know when we will finish. I have to be in Santa Barbara all next week and in Washington the week after that. I don't know when we will have an opportunity to finish it. [197]

Mr. Sikes: The State of Washington, sir, or—

The Court: Washington, D.C.

Mr. Margolis: I don't see how it could be possible, because we were hoping that we could finish by tomorrow night.

The Court: We can sit until 6:00 o'clock today.

Mr. Sikes: I unfortunately am taking depositions each night.

The Court: You postpone your depositions, Mr. Sikes, and we will finish this case. I don't think it is possible to finish it—we should finish by tomorrow noon if we sit late this evening.

Mr. Margolis: I am certainly willing to do it in your Honor. And I will try to hurry up and move along a little faster then. I will cut out some of my cross examination. I will cut it short.

May I proceed, your Honor?

The Court: You may.

Q. (By Mr. Margolis): Dr. Bullock, when Mr. Viteo came into your office you took a report from him, did you not? A. Yes.

Q. You took a history from him? A. Yes.

(Testimony of Lewis T. Bullock.)

Q. And upon the basis of that history, accepting it as true, you concluded that he probably had a coronary [198] thrombosis while on a fishing boat in January 1952, is that right?

A. Assuming the accuracy of the history, and assuming the lack of other evidence not available to me at that time, I came to that tentative conclusion with stated reservations and questions.

Q. However, the only additional evidence that you didn't have before you that you could have had was an electrocardiogram taken at or about the time of the accident, assuming his statement to be true. In other words, your diagnosis was based upon an assumption of the truth of his statements, isn't that right?

A. That's right.

Q. Now, let us from here on just assume them to be true for the purpose of the questions that I am going to ask you. Put that to one side.

The only additional evidence that you did not have, that you referred to in your report, was an electrocardiogram taken at or shortly after the time of the alleged attack?

A. And some more reliable observations concerning the findings on the patient at the time.

Q. Well, what do you mean by somebody—it is a question of the truth of his statements? Is that what you are talking about?

A. No. Of the actual physical findings. [199]

Q. Well, isn't it a fact that, accepting his description as reasonable and reliable, there were no findings which would preclude that being a coro-

(Testimony of Lewis T. Bullock.)

nary thrombosis, is that right?

A. No findings when I examined him?

Q. Yes.

A. No. I had no way to exclude coronary thrombosis.

Q. And even if an electrocardiogram had been taken the day after the accident, the day after the occurrence, and it had been negative, that would not have meant there was no coronary thrombosis. That is right, too, isn't it?

A. That is correct.

Q. Now, it is true, is it not, that although you found that there were some discrepancies between his history as he gave it to you and the telegram—that is, the messages from the Coast Guard which are in here as Exhibit 2, the ones we referred to—you found those discrepancies not to be of major importance in arriving at your diagnosis, isn't that correct?

A. Well, the diagnosis was based entirely upon the acceptance of his story as being reliable, irrespective of everything else; and the report so clearly states.

Q. Doesn't the report also say, "There is some discrepancy between the story—" and I think that is Mr. Vitco's story—"and messages recorded by the Coast Guard, although [200] these are not of major importance."

Doesn't it also state that, Doctor?

A. I believe so.

Q. And that was your opinion then and it is

(Testimony of Lewis T. Bullock.)

your opinion now, isn't that correct? Or have you changed your opinion?

A. It has to be interpreted in connection with everything else. Alone, one could not—taking that alone you could not change the general conclusion on the basis of that alone.

Q. And it was your opinion then that the differences between his story—just this one point—the differences between the history as he gave it and the messages, these radio messages, was not of major importance in your diagnosis?

A. I chose to rely upon his statement in reaching that conclusion; and, therefore, reached the conclusion.

Q. Well, Doctor, that is not my question. My question is that you also considered the differences between his story to you and the statements as they appeared in those messages as not being of major importance. A. Not alone.

Q. Well, let me—just to clear this one thing up, let me see if we can get the exact words of your report. Isn't it true that you said, "There is some discrepancy between the story—" you are referring there to Vitco's story, aren't you?

"—and the messages recorded by the Coast Guard, although [201] these are not of major importance." A. Not alone.

Q. Does it say "not alone," Doctor?

A. No.

Q. That is all it says, that "these are not of major importance"?

(Testimony of Lewis T. Bullock.)

A. But it does not say that put together with other things it wouldn't add up to something of importance. It points out there are discrepancies there.

Q. In other words, you found in the messages themselves information which generally tended to confirm your opinion that Mr. Vitco had a heart attack, or had a coronary thrombosis at the time on the boat, isn't that right?

A. No, sir. The messages were inconsistent with it, and there were major problems in the message that didn't go along with this story.

Q. What did you mean when you said, "the differences are not of major importance," Doctor?

A. The fact that one could not take that alone. It would be possible for those things in there that are inconsistent with his story to have been the result of confusion. However, when you start adding a number of different things together, it becomes a matter of very great importance.

Q. In other words, when you said, "the differences are not of major importance," what you meant was that they were [202] important but they could have been the subject of confusion. Is that what you meant to say? A. That's right.

Q. You didn't mean to say they were not important?

A. What I meant was that they alone were not—although they were inconsistent, and I was pointing that out, here is something that is not right

(Testimony of Lewis T. Bullock.)

but that is not enough still to make me—one has to choose either one story or the other.

Mr. Margolis: I have no further questions.

Mr. Sikes: May I have a few questions?

The Court: You may.

Redirect Examination

Q. (By Mr. Sikes): Doctor, what are the physical factors in connection with the taking of an electrocardiogram which can affect from moment to moment or minute to minute this T-Wave?

A. Oh, the most important thing is the position of the diaphragm. And that is particularly true in Lead 3. Lead 3 records the lower part of the heart, and that is resting right on the diaphragm. So the heart moves up and down with each change, each breath. And so by just breathing in it changes it. The fact that that is true is the reason why very frequently Lead 3 is taken both in inspiration and expiration because it is known to change so much. And by doing that routinely you get a record of the changes that [203] take place. However, the changes are so great that the T-Wave in Lead 3 is in general not of any great diagnostic significance.

Q. Does nitroglycerin relieve the pain of a coronary thrombosis?

A. Not to any extent, no. That pain is too severe. It cannot relieve an obstruction. It may relieve a spasm.

Q. And did you state that as far as angina pec-

(Testimony of Lewis T. Bullock.)

toris is concerned that normally there is no fever, no shortness of breath? A. That is correct.

Mr. Sikes: That is all.

Mr. Margolis: No further questions.

The Court: Doctor, if you have in mind your examination of this libelant here, if you were called upon to examine him and found him down fishing aboard a fishing vessel along the western coast of Mexico suffering from pharyngo-esophagitis, would you recommend that he be sent home? Would he leave the ship and fly home?

I should also say to you that he is the cook.

The Witness: Well, one would be faced with conflicting interests. However, one of the major ones is that he is a contagious person and might very well transmit this infection to the other people in the crew, when you would not only have the cook sick but everybody else sick. And for that reason someone [204] responsible for the illness of someone would in general tend to lean towards protecting the spread of a contagious disease.

Also, if he had something severe enough to produce as much trouble as was produced by this one, one thinks about abscesses, something that needs surgical approach, and, therefore, would need more than just penicillin. If one had an infection of that sort that had to be treated with fair doses of the antibiotics, but then was not responding, the one feels, well, now, we need a nose and throat man to examine this more thoroughly to see if drainage is complete, or something more can be done. An

(Testimony of Lewis T. Bullock.)

For both of those reasons one might very well recommend that he get into the hands of a nose and throat specialist.

The Court: Any further questions?

Mr. Margolis: No, your Honor.

Mr. Sikes: No, your Honor. Thank you, Doctor.

May the doctor be excused, sir?

Mr. Margolis: Yes. No objection.

The Court: You may be excused, Dr. Bullock.

(Witness excused.)

The Court: Do you wish the libellant to resume the stand?

Mr. Margolis: Yes, your Honor. And I am prepared to go ahead. * * * * * [205]

ANTHONY VITCO

The libellant herein, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Margolis): I think, Mr. Vitco, we had come in your testimony to a point where you had returned home. A. Yes, sir.

Q. About February 1st of 1952.

Now, when you returned home did you—

Mr. Margolis: In order to move along I may read a little bit, and if counsel objects I will stop immediately—on some things which I think are not critical.

The Court: Well, there is a great field there, I suppose, where there is no dispute at all.

Mr. Margolis: Yes.

(Testimony of Anthony Vitco.)

Q. (By Mr. Margolis): You went home in a cab from the airport, is that right?

A. That's right.

Q. And then you went to bed?

A. That's right.

Q. Now, the next day—or, did you have a conversation with Mr. Joncich?

A. That's right.

Q. Now, is this the same Mr. Joncich who hired you? [206]

A. That's correct.

Q. And he had not gone on the trip on the boat, and he is the Mr. Joncich who is one of the respondents?

A. That's right.

Q. Now, where was that conversation with him? Where did you talk to him? At your home?

A. When I came back?

Q. When you came back.

A. Yes, sir, my house. He came over to my house.

Q. And that was the morning of the day after you came back?

A. That's right, sir.

Q. And who was present besides yourself and Mr. Joncich, if anybody?

A. Well, my missus was home. My wife was home.

Q. Was she there during the conversation?

A. I believe so, sir.

Q. Now, will you tell us what was said, or with respect to the question of medical care, if you will? Getting to the doctor.

A. Well, we asked for a doctor. I told him

(Testimony of Anthony Vitco.)

would like to go to a Navy—health department which we belong to when we fish. Mr. Joncich says that he got one of his own doctors which he thought was one of the best that he ever try. He say he spent lot of money with other doctors and this [207] is one that he is pretty sure that is going to help me. And I went with him to his doctor.

Q. Was the doctor's name Dr. Ulrich?

A. Yes, sir, that is correct.

Q. And he was a chiropractor, not a medical doctor?

A. Not a medical doctor, no, sir.

Q. And you went to him beginning early in February, is that right?

A. Something like that, sir, as soon as I got back from the ship.

Q. And for how long a period of time did you continue to go to this doctor?

A. Well, sir, I—only a few days. I figure—well, I tell you what I did. I pay him \$125, I believe, and that is \$3 a call, and the first call is \$10.

Q. And the total amount that you paid him was \$125?

A. \$133, \$135, something like that. I must have went a little bit more than a month. It isn't every day. Mr. Joncich used to take me. And then my wife drove me. A couple of times a week we used to go.

Q. What did he do for you?

A. Well, he sent me down and he put something on my chest, on my knee, on my head—little thin—

(Testimony of Anthony Vitco.)

just like small piece, and they are hooked on electricity, and there's a radio or something in the bag. It doesn't feel hot or [208] cold—nothing. Just do feel nothing.

Q. And he gave you those treatments every time you came? A. That is right, sir.

Q. And how did you feel during the time that you were going to him?

A. Well, I felt worse every day, sir.

Q. The treatments didn't help you?

A. No.

Q. Will you tell us during this period of time what it was that was bothering you? For example, I want to know whether you felt better when you were sitting down or when you were walking—just how you felt and when and if you had pains where they were.

A. Well, the pains were in the chest, in my arm,—

Q. Which arm? A. The left one.

Q. Now, did the pain ever go into the right arm?

A. Very, very seldom. Once in a while it did go to me in the right arm. Very seldom. The worst of it was the left, sir.

Q. And whereabouts in the left arm was it?

A. It came down here to my wrist here (indicating); down, oh, well, this muscles inside, I believe. And it came down to my wrist here (indicating).

Q. Now, at any time while you were going

(Testimony of Anthony Vitco.)

Dr. Ulrich [209] did he give you any kind of pill or anything like that?

A. He gave me only one pill, sir, just about a few days before he told me not to come back no more.

Q. And you say he gave you one pill?

A. He gave me one pill and says, "You take this home and try it tonight. Put it under your tongue. And come back in three days and let me know what that pill did to you."

Q. And did you do that?

A. Yes, sir, I did.

Q. And what happened when you took that pill?

A. Well, it relieves my pain in the chest.

Q. Did it take it away altogether?

A. It helped me a great deal. It did help me.

Q. All right. Now, did the doctor tell you what was in that pill?

A. Yes. When I come back—he didn't tell me, but he told one of his doctors.

Q. In your presence?

A. Yes, sir. "I told you," he says. He says, "I told you." But he said in a medical—I couldn't understand "I told you that pill will tell us what is wrong with the man."

Then he told me, "Mr. Vitco, you don't have to come over any more. But I got a friend of mine, a doctor, he is not a specialist or anything, but I want you to go to him so he [210] can prescribe this kind of—let him examine you. I am pretty sure he can give you some pills that will help you when

(Testimony of Anthony Viteo.)

you get this pain." And that's what happened. I went to his doctor friend twice. It was on Vermont Avenue near here. And he examined me. He's both a chiopractor and a medical. And he gave me a prescription and then I bought those little pills and I have been using using them ever since.

Q. Those are the nitroglycerin pills, is that right?

A. Yes, sir, the same white ones.

Q. And have they given you relief when you have used them?

A. Yes, sir. I took one a little while ago. It helped me, but then not for a long time, but it helps me a little time.

Q. Now, did you ever go to the U. S. Public Health Service after you came back?

A. Well, no, sir—you mean after I——

Q. After you came back from the trip, you know after you came back on the plane.

A. Oh, yes, I went once.

Q. Did they examine you there?

A. Yes, they did.

Q. Were you told there what was wrong with you?

A. Yes. The doctor told me what was wrong with me.

Q. What did he tell you? [211]

Mr. Sikes: I am going to object to that on the grounds it is hearsay.

Mr. Margolis: I think it is admissible for the following reasons, your Honor: No. 1, it's the basi

(Testimony of Anthony Vitco.)

for other questions. There are two reasons. It has been alleged as a defense here——

The Court: First, let me ask you for what purpose you offer it. Do you offer it to prove the truth——

Mr. Margolis: No, no. I offer it for the purpose of showing he was told.

The Court: Just the oral fact.

Mr. Margolis: Yes, the oral fact that he was told, yes, your Honor.

Mr. Sikes: Then I object to it on the grounds of immateriality.

Mr. Margolis: The law is that a man, and I will cite authorities if your Honor wants them on this point, that a man has a right to rely on a diagnosis that is given by the doctor and act accordingly, even if that diagnosis happens to be wrong; and is entitled in reliance on that, if he doesn't work following that, to get maintenance. In other words, regardless of the truth of it.

The Court: In other words, it is relevant to the issue of whether or not he was fit for work, is that it?

Mr. Margolis: That's right.

The Court: Or considered himself fit for work.

Mr. Margolis: That's right. Even though the doctor's—I am not saying that the doctor's diagnosis was wrong, your Honor, but I am not offering it for the truth of the doctor's diagnosis. But I am offering it—and I want to confirm it merely to show what was said by a report from them, merely for

(Testimony of Anthony Vitco.)

the purpose that this is what he was told; this was the diagnosis which they transmitted to him, without regard to whether it was right or wrong.

The Court: Is there any issue as to when he was fit for work? Or is it agreed that he was not and has never been since?

Mr. Sikes: Pardon me just a second. I am trying to think over the evidence.

The only evidence that there has been so far is that he was not fit for work, I believe. Therefore what he was told by the United States Public Health is immaterial in view of the evidence that has come in so far. The only evidence at all was that he was unfit to work.

The Court: The question is not what the evidence is, is it? The question is, what are the issues? If the respondents stipulate or agree that he has never been able to work since, that is one matter.

Mr. Sikes: In view of the state court case coming up, I cannot stipulate as to that.

The Court: Very well. The objection is overruled. [213]

Mr. Margolis: Was there an answer to the question?

Well, I will repeat the question. I think it will be quicker, your Honor. It is a compound question, but I think it is proper.

Q. (By Mr. Margolis): What did the doctor tell you was wrong with you and what did he tell you to do?

(Testimony of Anthony Vitco.)

A. You want me to tell you, sir, every word he says to me?

Q. Tell me what you remember about what he told you.

A. He told me I got a heart condition; and, you know, like every patient likes to know, your Honor,—

The Court: You just tell us what he said.

The Witness: And I says, "What kind of a heart condition do I have?"

He says, "What's the difference?" He says, "You got a heart condition. You go home and go to bed, and don't get up except to the bathroom. Tell your mother to bring you food on the bed."

Then, I says—you know, the Navy, you can't talk much to them—I said, "Well, will I be able to do any work?"

He says, "Sit down." He says, "My father had the same trouble you did, but he was a newspaper man. Don't work." He says, "Go to bed and stay——"

Q. (By Mr. Margolis): Well, I think we can save time without going into the story. Just what he told you to do, [214] and not every word of it, every word of the conversation.

A. All right. He told me, "You go home and go to bed. You got family?"

And I say, "Yes."

He said, "You go home and go to bed and lay down and stay in bed for a couple of months." Then he says, "See how you feel. Take it easy." And

(Testimony of Anthony Vitco.)

that's all. He told me about his father having the same trouble.

Q. Did he say anything to you about the nitro glycerine? A. Yes.

Q. What did he say?

A. Well, he says to put under tongue any time I got pain, put them under the tongue, like those other doctors—the same thing.

Q. Now, after you stopped going to Dr. Ulric—well, did you start shortly thereafter?

A. May I please ask you this: After I ask him what kind of trouble I had, but I don't know what that mean then, he says, "Angina pectoris." But I don't know. He says, "You got angina pectoris and two different conditions." And then he make me sit down.

Q. Did he say anything else besides that?

A. He say two different heart conditions. I don't know. He took that—what you call it?

Q. An EKG? [215]

A. That's right.

Q. Now, after you stopped going to Dr. Ulric, did you then go to Dr. Abowitz, Murray Abowitz?

A. I tell you what I did, sir. I try to go to the Navy again, but—I guess must have been that time—but I get in—after two months I couldn't get in any more.

Q. They wouldn't treat you?

A. No. They say, "After two months you can't fish." But I was sick. Then I went to Dr. Abowitz.

Q. Now, you went, I believe the first date, a

(Testimony of Anthony Vitco.)

According to Dr. Abowitz' records, March 27, 1952.

Would that be about right?

A. Just about right, sir, yes.

Q. Now, when you went to Dr. Abowitz how were you feeling as compared to when you had come in on the airplane from Mexico?

A. I was feeling, Mr. Margolis, bad, very bad. My wife have to put shoes and every clothes on me. I couldn't do anything. After I got to Dr. Abowitz he started to give me some treatments, some shots, took the cardiograph. He told my wife I had heart trouble. He told me, "Don't move. Take it easy." And, oh, after a couple of months I start to feel gradually a little bit better. I was able to dress myself, sir.

Q. Did he give you various kinds of medicine?

A. Yes. I got lot of bottles that he gave me.

Q. Did he continue to give you nitroglycerin?

A. But I use most—with all the other medicines, I have been using this nitro. That seems to help me more than any other medicine.

Q. You continued to go fairly regularly to Dr. Abowitz until sometime in December of 1953?

A. Pretty regularly, sir, yes.

Q. And then you didn't go to see Dr. Abowitz for, oh, many months, nine or ten months, or something like that, is that right? A. Yes, sir.

Q. By the way, how had you been getting to see Dr. Abowitz?

A. Mr. Vitco and my wife were driving me. She went with me.

(Testimony of Anthony Vitco.)

Q. By the end of 1953, were you driving a car by that time?

A. Oh, yes, sir. I could drive if it wasn't too much of traffic where I couldn't get—then if I got in pain I pull up to the curb and take a little pill and stay for about five minutes and go on again. But I didn't trust myself to drive much.

Q. Did you feel capable of driving yourself to Dr. Abowitz? [217]

A. Alone? No, sir. I was afraid to take chance.

Q. Dr. Abowitz' office is on Wilshire Boulevard and you were living in San Pedro?

A. Yes. Pretty traffic—I was afraid to take chance.

Q. Did anything happen in December of 1953 so far as your wife being able to bring you to Dr. Abowitz' was concerned?

A. Well, most of our savings—in fact, all of it went, and you know, pretty hard to live like that. And she went to work in a cannery.

Q. She never worked before, is that right?

A. Never. I never thought she would have to. But she went to work in a cannery. Then I couldn't just go alone. I had nobody to take me over or pay anybody. Nobody to pay them. I couldn't go alone. But I called him on the phone, sir.

Q. Did you keep in touch with him?

A. Yes, sir.

Q. You used the telephone?

A. I remember—yes. I called him sometime eve

(Testimony of Anthony Vitco.)

twice a day when I had those, you know, kind of like today—bad.

Mr. Margolis: I think, your Honor, we ought to take a recess.

The Witness: I am pretty tired. A little bit more? [218] Can I go a little bit more? A little bit more?

Mr. Margolis: All right.

The Court: You let us know when you have had enough.

The Witness: That thing checks me. Yesterday I was all right. Today I am no good.

Q. (By Mr. Margolis): Did you keep gradually getting better after you went to Dr. Abowitz, or after a couple of months did you sort of level off and stay the same?

A. No. I don't understand that one. Tell me again, please.

Q. All right. You have already told us that Dr. Abowitz' treatment and the things that you did after you went to Dr. Abowitz made you feel better.

A. Mr. Margolis, I know he can't cure me—nobody can cure me—but God bless him.

Q. Well, that isn't the point.

A. He helped me a lot, sir. He helped me a lot. I dressed myself.

Q. All right. What I am trying to get at is this: For how long did you continue to get better? Are you still getting better?

Mr. Margolis: Well, I will withdraw the last question.

(Testimony of Anthony Viteo.)

Q. (By Mr. Margolis): Are you still getting better?

A. I have been getting better every time I went to him, sir. Every time he helped me. He usually give me a lot [219] of shots, and shots did help me sir, a lot—and other things.

Q. Is your condition still improving, or has it been for some time about the same?

A. Well, no, I can't say that I am getting every day better any more.

Q. About when did you stop getting better?

A. I believe since I didn't have any more much treatment from Mr. Abowitz. I believe since I am not going to the doctor's no more.

Q. Was that the end of 1953 or 1954? When was it in time. Do you remember?

A. Did I stop from Mr. Abowitz? Oh, I don't remember, sir. It must be bill some place. Not very long ago, I guess. I know I went to this other doctor a couple of times after Abowitz. What is his name, that is here today?

Q. Dr. Hittelman? A. Yes, sir.

Q. But can you fix at all—it is now 1955.

A. Yes, sir.

Q. It is now February of 1955. Was it last year that you stopped feeling better? Was it the year before? Was it this year?

A. That I stopped feeling better, you mean?

Q. When you can that your improvement just about stopped. [220]

A. It must be last year.

(Testimony of Anthony Vitco.)

Mr. Sikes: Excuse me. I am going to object to that, your Honor, that last question as it was phrased, obviously calls for a conclusion of the witness as to whether his condition is getting better. The previous question about whether he was feeling better——

Mr. Margolis: I think counsel is right and——

The Court: He has answered the question.

Mr. Sikes: Oh, he has. What did he say, please?

(Answer read.)

Q. (By Mr. Margolis): And when you say it must have been last year, it meant that is when you stopped feeling better? A. That's right.

Mr. Margolis: That is all I am offering it for, obviously, your Honor.

Q. (By Mr. Margolis): About when last year? Can you remember?

A. Be in September, October or something like that. I know it was before Christmas.

Mr. Margolis: I have no further questions on direct.

Oh, about one more—two or three more on work.

Q. (By Mr. Margolis): Have you done any work at all since you returned from Mexico?

A. Well, no, sir, nothing to amount to anything—nothing. [221]

Q. When you say “not to amount to anything,” what do you mean? Explain what you have done.

A. Well, I—when Mama was working—she is not working now—I go after groceries and I cook a meal for my family—home—when I can.

(Testimony of Anthony Viteo.)

Q. In other words, you helped around the house by cooking a little bit, by getting some groceries sometimes—that kind of thing?

A. That's right.

Q. Did you ever work on any kind of a job since then?

A. No, I couldn't get no job. Even if I asked for it, they don't want to give it to me. I asked one company if they could give me a little work—

Q. Well, have you worked? A. No.

Q. Do you find that your trouble, your difficulty gets worse, your pain gets worse or starts if you do certain things?

A. Well, sir, yes, sir, it does.

Q. Tell us what causes it?

A. Well, if I get little bit sore, you know, some thing, or if I get excited, or if I try to work a little bit—sometimes I drive around my house around the block. Sometimes, if it is on the level I can maybe a couple of blocks, but up in the hill I can't do it. And if it's a little bit windy it hurts me terribly in my chest. [222]

Mr. Margolis: That is all on direct, your Honor.

The Court: Do you feel like answering Mr. Sikes' questions now, or do you want to quit for the day?

The Witness: I like to help him finish this.

Mr. Sikes: Oh, no, don't help me—

Mr. Margolis: Well, I think if we could have a few minutes' recess—

The Witness: I got to take one of this pills—

(Testimony of Anthony Vitco.)

Mr. Sikes: If the court please, I obviously don't want to find myself in the position of pushing this man beyond his physical ability.

The Court: We will take a recess, and you gentlemen talk with him.

Mr. Sikes: All right, sir.

The Court: The court will recess for five minutes.

(Short recess.)

Mr. Sikes: If the court please, we have more or less agreed that probably a half hour more with Mr. Vitco would probably be all right as far as his physical condition is concerned.

The Court: It isn't going to take a half hour, is it?

Mr. Sikes: Sir?

The Court: It isn't going to take a half hour more with him, is it? .

Mr. Sikes: A half hour this evening. [223]

Mr. Margolis: I am finished with direct.

The Court: Cross examination, 15 minutes.

Mr. Sikes: Well,—

The Court: I should start limiting both of you gentlemen on this cross examination. You want to just wear out like you do over in the State court. Don't do it over here.

Mr. Sikes: I have only had the opportunity to cross examine one person so far, as I recall, and this is the key witness. I will do my best. But I believe my duty is to cover the points—

(Testimony of Anthony Vitco.)

The Court: Yes, you cover whatever you feel is necessary.

Mr. Sikes: But we have agreed to stop——

The Court: Let's don't go over all this undisputed ground.

Mr. Sikes: That's right, sir.

We do have a stipulation, again in the interest of expediency. I am going to read the fisherman's share of the catches during 1952 subsequent to his leaving the vessel.

The trip ending February 25, 1952, the trip on which he was injured, on which he allegedly fell ill, \$279.10 in the hole. That is, minus quantity.

The trip ending March 27, 1952, the net to each seaman, \$1,161.13.

The trip ending May 5, 1952, the net, \$1,150.09.

The trip ending June 5, 1952, \$1,501.52. [224]

The trip ending July 25, 1952, the share was \$1,401.17.

The trip ending September 5, 1952, \$1,156.63.

The trip ending October 20, 1952, \$311.41.

And then, your Honor, we have another trip which I understand we will have to have evidence on, actually, again sometime in February of '52. It may very well be inapplicable here, but in any event the trip, the next trip ended March 23, 1953 and had a share for each member of \$1,290.23.

Mr. Margolis: I will so stipulate. Incidentally I think it might be well to explain that the minus is the share of the groceries—sometimes a share of the groceries is more than the share of the catch

(Testimony of Anthony Vitco.)

Then you have a minus. And the net figures in each case are the figures after the payment by each fisherman of the share of the groceries for that trip. Is that correct?

Mr. Sikes: Groceries and expenses, yes.

Mr. Margolis: Expenses chargeable to the fishermen.

Mr. Sikes: Yes. That's why they come out with a minus.

Mr. Margolis: I want to ask this, if it isn't so that in these figures that the loss from trip No. 1 was deducted from trip No. 2, so that that loss is already taken into consideration when you get the trip No. 2 net?

Mr. Sikes: One moment, if I may, sir.

That is correct, sir. I have a communication which states that the net share—the reason the net share was so small [225] as compared with the gross for the trip which ended on March 27, 1952, was due to the fact that the loss for the preceding trip was deducted along with the deductions for the trip ending March 27, 1952.

The Court: Well, now, was the trip ending March 23, 1953, a part of this same season?

Mr. Margolis: There was an unusual situation, your Honor. There was a strike when the boats were laid up and I am not sure myself what the opposition is going to be. There will have to be evidence on that because there was a period of time and a question of whether the boat was laid up in that time, and other things. It is not a normal

(Testimony of Anthony Vitco.)

situation. Ordinarily, it would not be. We may or may not contend that it is in this situation.

Mr. Sikes: My position, of course, is that it was not.

The Court: Very well. Are you ready to proceed with the cross examination of the libellant?

Mr. Sikes: Yes, sir.

Cross Examination

Q. (By Mr. Sikes): Mr. Vitco, you say you went back to the United States Public Health at San Pedro after you had your electrocardiogram in March of 1952. Did you then go back later?

A. Yes, I did, sir.

Q. When did you go back then next? [226]

A. Well, sir, I would make a mistake on that if I tell you. I don't know if it's possible to find some record. I don't remember. But I know I wasn't entitled to any more because two months elapse and they don't want me any more.

Q. May I ask you this, then: Isn't it true that you didn't go back for an entire year up until March 12th of 1953?

A. I won't deny that, sir. I really don't know.

Q. Isn't it true, Mr. Vitco, that when you were in the United States Public Health Service that you were there in September of 1951, sir?

A. Oh, yes, sir, I was.

Q. And at that time you were complaining of soreness in your chest, is that right, sir?

A. Well, I don't know what was it. I was fish-

(Testimony of Anthony Vitco.)

ing locally here then, for a while, and I had a little flu or something like that.

Q. Did you only go back to the United States Public Health once after you were there the time when you had your heart examined and an electrocardiogram taken?

A. I only took—I believe, I guess they did it all in one day, sir.

Q. I meant, did you only go back once more, is that correct?

A. I believe I did, if you mean after I got a heart [227] illness.

Q. Well, after you had your electrocardiogram taken by the Public Health people, it was after that that you only went back once. You have only been back there once.

A. Not very much times. You might be correct on that. I am not pretty sure. He didn't ask me to come back, sir.

Q. You have been at Public Health a number of times since you have been a seaman, haven't you?

A. In San Pedro I would say not more than three or four times.

Q. Mr. Vitco, you were seen by Dr. Earle in October or November of 1951, is that right, sir?

A. Yes, sir, I was.

Q. And at that time did he tell you that you had an infection in your throat?

A. He told me that I had sinus or something like that, and I had a cold, and he gave me some—a bottle of medicine, some cough medicine. And

(Testimony of Anthony Vitco.)

that is all. He didn't ask me to come back or nothing.

Q. Do you remember whether he told you you had an infected throat?

A. I don't remember, sir. He told me something about sinus, or something like that. But he didn't say about infection. I mean, I didn't understand if he did, sir.

Q. Mr. Vitco, you had had dizzy spells before you ever [228] went on the boat for this trip, hadn't you?

A. You mean the last trip that I went with?

Q. Yes.

A. Oh, sir, to be frank with you, I don't remember if I had then, but I did have them in my life—not severe, but lots of times; weakness and stuff like that.

Q. Now, when you were on the boat at the same time that the captain was telling you that he was sending messages, as I understand it, to the Coast Guard, did you tell him what your symptoms were? That is, how you felt?

A. Oh, yes, I believe I told Joe—that is, Mr. Mardesich—there like pain in my chest and I can't breathe and I am going to die; stuff like that. He was alongside of me. So the way I felt——

Q. Did you have a feeling that there was something caught in your throat?

A. Well, no, you see—the way—this, you can't explain yourself, in that moment what really—except you got terrible pain and hard of breathing;

(Testimony of Anthony Vitco.)

and a lot of things comes. God bless anybody from that. It is just terrible the way you feel when you get those kind of attacks.

Q. Mr. Vitco, I would appreciate it very much if you would listen exactly to what I am asking you. If you want to explain, you may do so.

A. I am sorry. I won't do it no more. [229]

Q. I want you to listen closely. A. Yes.

Q. Did you point out on your body to the captain where your trouble was?

A. I don't remember, sir, on that moment. I think I was very pretty bad sick, if I—I remember later, but the first attack, I don't think I told him much of anything.

Q. I show you what appears to be a photostatic copy of the United States Coast Guard shipping articles. A. Yes.

Q. They refer to the vessel Pioneer and they are dated December 27, 1951; on the second sheet of which appears the name "Anthony Vitco."

Do you know if that is your signature?

A. Well, I tell you—would you permit me—if your Honor please, please forgive me.

Yes, sir, that is my correct name. That is my writing.

Q. And you signed these before you went on—that is before you left on the vessel?

A. Yes, sir, I did.

Mr. Sikes: If the court please, I should like to offer in evidence at this time a photostatic copy of the United States Coast Guard Shipping Articles

(Testimony of Anthony Vitco.)

between the Master of the Pioneer and the various members of the crew, one of which was the libelant, Mr. Anthony Vitco. [230]

Mr. Margolis: If your Honor please, I want to object on the ground that it is incompetent, irrelevant and immaterial. I do not object to it on the ground that it is a photostatic copy or isn't what it purports to be. I suggest, your Honor, we have another legal point here, and my objection may go to the weight and the meaning of the exhibit, rather than to whether it is admissible; although, I am not sure. I, therefore, suggest that my objection be overruled and my motion to strike be reserved for the time of argument.

The Court: Very well. That will be the order.

Mr. Sikes: All right, sir.

What number will that be, Mr. Clerk?

The Clerk: Respondents' Exhibit D.

The Court: In evidence.

(The exhibit referred to was received in evidence and marked Respondents' Exhibit D.)

Q. (By Mr. Sikes): Mr. Vitco, isn't it true that before you came on the vessel you had had a pain in your arm, in your left arm?

A. I don't remember, sir.

Q. Didn't the United States Public Health Service take X-rays of your arm, your left arm?

A. They took the X-ray at my chest, sir. Probably they did the arm, too. I don't remember.

Q. Didn't you come into the United States Pub-

(Testimony of Anthony Vitco.)

lic Health [231] and complain of pain and aching in your arm in November of 1951?

A. In the arm? I don't remember, sir.

Q. You mean you don't remember whether you did?

A. In the arm? I don't remember. I know in the chest. I don't remember the arm. But in the chest I do remember. I know I was there.

Q. Before you went out on the vessel?

A. That was in the summertime, during the local fishing, before I went on Pioneer, sir.

Q. Pardon?

A. Before I went on Pioneer.

Q. You have already told us on direct examination what conversation you heard when you were in the hospital at Manzanillo where you were examined by Dr. Martinez. Can you remember any other conversation that was said either in Spanish or in English at that meeting there between you, Dr. Martinez, Mr. Mardesich and the broker, in addition to what you have already told us?

A. No, sir. If you remind me of some, sir. I don't remember. I told what I heard the doctor say, and the skipper and the broker. That is all I remember.

Q. That is, what you have already told us about, is that correct? A. I believe so, yes, sir.

Q. Now, will you tell us just what your conversation [232] was with Mr. Joncich before you went on the Pioneer relative to you going on it, and regarding your work?

(Testimony of Anthony Vitco.)

A. With Mr. Joncich?

Q. Yes.

A. Yes, sir. Just like any other time that he or skipper called. He ask me if I wanted to go fishing. I stood there a while. I would like to go to San Diego on Normandie because—he asked me—I made already a trip on the big boat Normandie in San Diego—and he asked me, any time I feel like coming back, if I want to go fishing with him—in fact, I told Mr. Mardesich about a month ago that I was going to go down to San Diego. Then Mr. Marion Joncich stopped me on the fishing wharf and asked me if I want to go on Pioneer. I fish with Mr. Joncich before a couple of years. And then he retire for one. And he says, “Tony, if you want to come with me I will go, too.”

“If it’s a good season,” he says, “we will go together.”

And finally I said, “All right, Marion, I will go.”

Q. Can you think of any other conversation that was had between you two at that time?

A. No, sir, I don’t know.

Q. It is the custom and practice in the fishing industry at San Pedro that instead of wages a fisherman receives a share, isn’t that correct?

A. Absolutely correct, yes. [233]

Q. Isn’t it also the custom and practice among the fishermen, and in the fishing industry in San Pedro, that when a man falls ill on a vessel, different from being injured—

A. Yes.

Q. —that he recover his share of the catch

(Testimony of Anthony Vitco.)

for the trip on which he fell ill but for no other trips after that?

A. Well, sir, I never read the—I can't tell you what's in the contract or how they do. I don't know, sir.

Q. Possibly you have misunderstood me. I didn't want to know what was in the contract. I wanted to know what was the custom, the practice among the fishermen. You have been a fisherman for many years, and I wanted to know what was the custom and practice.

Mr. Margolis: If your Honor please, I wish to object to this question on the grounds it is incompetent, irrelevant and immaterial, because with respect to the question of the right to wages to the end of the period of employment, no custom or practice can change that maritime right.

Mr. Sikes: If the court please, I have looked over——

The Court: Overruled. You may answer.

Mr. Sikes: Would you give Mr. Vitco the question, Mr. Reporter?

The Court: Do you understand the question? Mr. Sikes wants to know what happened in other cases, what was the custom when a seaman fell or became ill at the beginning or [234] middle of the season.

The Witness: But, your Honor, I never been that much away. I never got——

The Court: Did you ever hear of other cases down there where a seaman became ill on the first

(Testimony of Anthony Vitco.)

trip out, or during the next trip out, the second or third trip out and couldn't continue with the season? Have you ever heard of other persons that did that?

The Witness: Got sick and——

The Court: Couldn't finish the season.

The Witness: Well, yes, sir.

The Court: Now, as I understand it, what Mr. Sikes wants to know is what was the custom down there and the practice of handling that sort of situation? Would the seaman who fell out sick in the middle of the season, say,——

The Witness: Yes.

The Court: ——would he get his share of the catch on to the end of the season, or would he just get the share of the catch up through the last voyage he was on?

The Witness: Well, your Honor, to tell you the truth I don't know how they figured that out. I don't know how they figured that out.

Q. (By Mr. Sikes): Then I will ask you this, Mr. Vitco: Didn't you become ill on the Pioneer in April of 1948? A. Yes, sir, I did. [235]

Q. And you came home, didn't you?

A. Yes, sir, I did.

Q. And you shared in the catch of that particular trip, didn't you?

A. I believe they give me money, sure, for that.

Q. And you didn't go out on the next trip, did you? A. I didn't go out on the next trip.

(Testimony of Anthony Vitco.)

Q. And you didn't receive your share of the catch on the next trip, did you?

Mr. Margolis: Just a moment. That is objected to on the ground that it is incompetent, irrelevant and immaterial as far as establishing custom. You do not establish custom by a single case.

Mr. Sikes: If the court please, this is also in the nature of impeachment, just what he got through saying, that he never knew what that custom was, what happened in these cases. I believe that is a direct impeachment of what he just got through saying.

The Court: Overruled, on the latter ground. He may answer.

The Witness: May I——

The Court: Were you paid that season for any later trips which you did not make?

The Witness: I wasn't paid, your Honor, until I got back on the boat again. [236]

Mr. Sikes: Thank you.

Q. (By Mr. Sikes): Now, isn't it also the custom and practice, Mr. Vitco, that the crew can leave the vessel at the end of any voyage and they are not bound to continue on through the end of the year?

The Court: The year or the season?

Mr. Sikes: The season.

The Witness: The crew can leave?

Q. (By Mr. Sikes): Yes.

A. You are correct in that.

The Court: In other words, if a seaman is hired

(Testimony of Anthony Vitco.)

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The Witness: The crew can leave?

Q. (By Mr. Sikes): Yes.

A. You are correct in that.

The Court: In other words, if a seaman is hired

(Testimony of Anthony Viteo.)

for the season, it is the custom and practice down there at San Pedro that at the end of any voyage he can take his share up to that time and quit?

The Witness: That is correct, your Honor, yes.

Mr. Sikes: I am just checking off repetition, sir. I am really making time here.

The Court: You just take your time. I want you to labor under pressure.

Q. (By Mr. Sikes): Isn't it true, Mr. Viteo, that you told some of the members of the crew when you were down in the Mexican waters after your first attack on January 3rd, from then up to January 29th, didn't you tell various members of the crew that you did not want to go home?

A. I asked them—asked Mr.—the skipper, the captain, [237] I asked him three times, I begged him, and I asked his brother Nickie—Nickie told me to go ask Joe to let me go and see my family once more. What else can I do?

Q. I am awfully sorry, Mr. Viteo, and I don't want to pressure you too much, but I want you to listen to my question. That is the main thing, if you will just listen.

Isn't it true, Mr. Viteo, that you told several members of the crew, between the time you had your first attack of January 3rd and January 29th, that you did not want to go home?

A. I never remember saying that, sir.

Q. Do you deny that you said it?

A. Well, I don't remember I said it. I know I

(Testimony of Anthony Vitco.)

beg to go home. But I don't remember to say when I was sick that I don't want to go home.

Q. Well, sir, would you say that you did not say it?

A. Well, I wouldn't swear that I did not say it, sir. But I don't remember saying it. I know I asked to send me home, but they didn't want to.

Q. Isn't it true that after having seen the doctor, the Mexican doctor in Manzanillo, that you asked Mr. Mardesich to continue on with the fishing and to let you go out with the vessel again; that you wanted to try it again?

A. I want to go home so bad that time.

Q. I am sorry. You aren't listening to my question.

Isn't it true that you told Mr. Mardesich, after having [238] seen the Mexican doctor, isn't it true that you told him, Mr. Mardesich, that you wanted to go out again on the vessel and you wanted to try again? Isn't that true?

A. I don't remember saying that.

Q. Pardon?

A. I don't think I ever said that. I don't remember saying that I wanted to go out when I was that sick.

Q. You deny under oath here that you said that?

A. I don't remember saying it. I sure tell you I don't remember ever asking Mr. Mardesich take me fishing out after——

The Court: Didn't the vessel go back to fishing

(Testimony of Anthony Viteo.)

after Dr. Martinez examined him? Is there a dispute about that?

Mr. Sikes: No, sir. I am trying to find out whether he really was so anxious to go home, or whether he in fact said, "Let's go out again—" he himself. That is what I was asking.

Q. (By Mr. Sikes): Well, I would like an answer if you can——

A. I told you I pretty sure, sir, that I never said that. I was so sick I really wanted to go home. To tell you the truth, I never felt like going home in my life like I did this time. But you can't walk home from down there. I had no money or any thing to go home, if he didn't give me money.

Q. I will ask you this: Did you ask Mr. Marde-
sich [239] for money to send you home then when you came out of the doctor's office?

A. Yes, sir, I did. He gave me—then second time when we come in he give me money. On the second—after we went out and then come in, he gave me——

Q. Well, I am talking about the time when you were examined by the Mexican doctor. When you were on shore that time did you ever ask Mr. Mar-
desich to send you home or to arrange for your airplane?

A. I asked him to send me home, sir.

Q. Did you ask him——

A. He said, "We are going to try four more days." And I don't think, sir, that—I don't remember, but I don't think we stood four more days.

(Testimony of Anthony Vitco.)

ut. They have to come in sooner than that with
e.

Q. What did you say to him when he said, "We
re going to try it for four more days"?

A. I told him I was going to give him nothing
ut trouble. He says, "We are going to try four
more days." And I think that is what we did. I
on't know how many days we stood; but not too
much.

Mr. Sikes: This won't be long, your Honor.

The Court: Take whatever time you require.

Q. (By Mr. Sikes): Did you complain at all
o the Mexican doctor about any pains in your
chest? [240]

A. In the chest and in the arms, sir.

Q. You did? A. Yes.

Q. Did the Mexican doctor use a stethoscope on
ou?

A. I don't want to say one word that isn't true.
wonder if Mr. Mardesich would help me on that.
I don't know if he did or not, to tell you the truth,
sir.

Q. All right.

All during the time when you came back, that is
after you had come back on January 30, 1952, you
knew, didn't you, that you were entitled to free
medical treatment at the United States Public
Health in San Diego?

A. Yes, sir, I did. In fact, the skipper, Mr.
Mardesich told me to go in medical, in what you
may call it.

(Testimony of Anthony Vitco.)

Q. To the U.S. Public Health?

A. That's right. I knew that.

Q. Did you go?

A. No. Mr. Joncich took me to another doctor.

Mr. Sikes: I am going to quit at this time, your Honor. I am five minutes over.

The Court: Take whatever time you need. I don't like to limit counsel arbitrarily.

Mr. Sikes: If I think of something else, sir, I may call him as an opposition party for a couple of questions tomorrow, if we have some time, sir.

Mr. Margolis: I have no objection to putting that over. I may want to ask a couple of questions on redirect.

The Court: You may step down.

(Witness excused.)

Mr. Margolis: Your Honor, subject perhaps to a few questions on redirect, and any further cross-examination that Mr. Sikes wants to have tomorrow morning or so, Mr. Vitco, the libelant rests.

The Court: How much testimony will you have, Mr. Sikes?

Mr. Sikes: I have Mr. Joncich. And I think I might put him on and get him off. It is pretty short. I could do that now, with the court's indulgence, and then—

The Court: Very well.

Mr. Sikes: —tomorrow I will either have him alone, Mr. Mardesich, or two of the crew members and Mr. Mardesich for a very short examination.

The Court: We should be able to finish in two or three hours.

Mr. Sikes: It begins to look better all the time.

Mr. Joncich.

MARION JONCICH

Called as a witness by the respondents, being first sworn, was examined and testified as follows:

The Clerk: Give me your full name.

The Witness: Marion Joncich. [242]

The Clerk: How do you spell that?

The Witness: M-a-r-i-o-n J-o-n-c-i-c-h.

Mr. Sikes: If the court please, there may be some language difficulties here, so I would like to say two or three words first to the witness.

Mr. Joncich, the main thing is not to talk too fast.

The Witness: I am going to try.

Mr. Sikes: Talk so that his Honor can hear and Mr. Margolis and I can hear you.

Direct Examination

Q. (By Mr. Sikes): Now, your name is Marion Joncich, isn't it? A. Yes.

Q. And you are one of the owners of the Pioneer? A. Yes.

Mr. Sikes: If the court please, I am just making some preliminary leading statements.

Q. (By Mr. Sikes): You were not on the Pioneer when it went on this voyage when Mr. Vitco became ill, were you? A. No.

Q. Now, did you ever have a conversation with

(Testimony of Marion Joncich.)

Mr. Vitco sometime in the late fall of 1951 regarding him going to work for you?

A. Well, I met him down in the fishing dock you know, San Pedro, one morning and I told him he want to come fishing [243] because I know fishing, because Mr. Mardesich run the boat.

Q. Now, not too fast. I meant not too fast on your speaking. It's for the reporter. You go ahead.

A. Then Mr. Vitco answered me that he want to come.

Q. Did you have any conversation with Mr. Vitco after he came back? He came back, I believe on January 30th, 1952.

A. Yes.

Q. Did you have more than one conversation with him?

A. Well, yes, he used to call me up on the phone every once in a while; once or twice, something like that.

Q. And will you tell us what your conversation were with Mr. Vitco relative to the trip or his illnesses or doctors or anything along that line?

A. Well, Mr. Vitco come in from Mexico, he call me up on the telephone that day he come in. Then he told me, he said, "Marion, I come sick. I can't stay any longer."

And then I say, "what's the matter with you? What doctor said that?"

And he said, "I got something in the throat. I don't know what's the matter."

Then I asked him, I say, "I like come see you tonight."

(Testimony of Marion Joneich.)

And he say, "No, I'm tired. I just come in with the plane, and I am awfully tired." [244]

Then I go next day.

Q. Do you mean by that that you went to his house? A. Yes.

Q. And did you two have a conversation there?

A. Yes.

Q. What was said there?

A. And he asked me, he say, "Mr. Joneich, what doctor you going to? You be sick for long time."

And I told him, "Mr. Viteo," I say, "I change so many doctor." I say, "This one is the best one for me, Dr. Ulrich, Crenshaw Boulevard."

Q. May I interrupt for a moment. Were you yourself then going to Dr. Ulrich, being treated by him? A. Yes. I going every week.

Q. Continue then about this conversation.

A. Then he asked me, "When you going to go up?" I say, "I go once a week. I going to go day after tomorrow."

Then he told me, he say, "If you make appointment for me I gonna go see him." And he said, "But I can't drive. If you take me, I appreciate that"

Then I call up next day. Then I call him back. I say, "If you want to come, I gonna come and get you. I got appointment for you."

Mr. Sikes: Thank you. You may cross examine.

(Testimony of Marion Joncich.)

Cross Examination

Q. (By Mr. Margolis): Mr. Joncich, if you don't understand any question I ask you, you say so.

A. Okay.

Mr. Sikes: If the court please, I have found in talking to him that if you talk slowly he understands the question much better.

Mr. Margolis: I will do my best.

Q. (By Mr. Margolis): Mr. Joncich, do you remember when you met Mr. Vitco down at the fishermen's pier and you talked to him about going to work on your boat, the Pioneer? Do you remember that?

A. Yes.

Q. Do you remember then, did he say to you that he could go on another boat and was thinking of going on another boat from San Diego?

A. He never told me that.

Q. He never told you that? A. No.

Q. All that happened was that you asked him to go and he said, "All right, I will go"?

A. And he told me like this, he say, "I gonna talk to my wife tonight and I let you know tomorrow." Then he let me know next day; called me, said he gonna come. [246]

Q. Did you tell him you would start working on the boat to get it ready for the trip?

A. That was sometime in November. I don't exactly what day it was. But we start working sometime in November. I do know 15th or 20th, something like that.

(Testimony of Marion Joncich.)

Q. About the middle of November?

A. November.

Q. And this was before you went to work?

A. Yes.

Q. You were going to go to work to get the boat ready for the season, whole season.

A. Whole season.

Q. And that meant until you laid up the boat at about November, maybe, or December of the next year?

A. Is for season, that was; but two seasons in the year, see—two season in the year.

Q. Do you lay your boat up in between these two seasons in the year?

A. Yes. Always two seasons every year, regarding the contract. This in the contract.

Q. I am not talking about what is in the contract. You were going to get the boat ready in November to go out.

A. Yes.

Q. For how long were you getting the boat ready? For just one trip? [247]

A. For season, we do. For season, January, February, March, and for—

Q. For the whole season.

A. For season, yes.

Q. But when is the next time that the boat was laid up and this same work was done again?

A. Well, two season in the year.

Q. When is the next time? Do you understand this question?

A. Yes.

(Testimony of Marion Joncich.)

Q. Let me start over again. In November you paint the boat?

A. Sometime in November.

Q. You start in November and you paint the boat, fix it up, right? Fix the net. Took the net off the boat and fixed it? A. Yes.

Q. And then the net is put back on the boat and you get stores, provisions to go fishing, and you put that on the boat?

A. Yes. That last day before you go out.

Q. Before you go out. All right. Then when was the next time after that that you painted the boat and that you put—took the net off and fixed the boat? When was the next time?

Mr. Sikes: I object to that, your Honor, on the grounds [248] that it is absolutely immaterial to the issues of this case.

The Court: Overruled.

Mr. Margolis: Mr. Joncich, I try to make my questions clear. Do you understand them?

The Witness: I gonna try.

Q. (By Mr. Margolis): Well, Mr. Joncich, you fix up the boat in November, November, December 1951. You remember that? Then you go fishing. You went fishing for more than one trip; for several trips. A. Yes.

Q. You understand that? When did you again paint the boat and take the net off and fix it? When was it?

A. Well, you know how it is, when you go into dry dock every three months.

(Testimony of Marion Joncich.)

Q. About the men? I don't mean when you go into dry dock. When the men paint the boat and take off the net and fix it. When was that again?

A. They used to do it in July, June and July.

Q. Do you usually do the same thing in June or July?

A. No crew. I used to do it through the shipyard.

Q. Well, when is the next time that the crew did the same thing that it did in November or December of 1951?

A. Well, it's difficult. We used to make some time in two or three different places. You know, big nets in the beginning of the season, then after while, July, June and July, [249] we make small nets—do it twice a year.

Q. Yes. But what I am talking about is when you do all this work of the crew, painting the boat, taking off the net—once you do a big job on the net, right; fix up the whole net?

A. Yes. But after six months we change them again.

Q. But do you do the same thing over again in six months? A. Yes.

Q. You paint the boat again?

A. Crew no doing, but shipyard doing.

Q. But when is the next time that the crew paints the boat?

Mr. Sikes: May I offer a stipulation? It may clear it all up. May I consult with counsel?

The Court: Yes.

(Testimony of Anthony Vitco.)

Redirect Examination

Q. (By Mr. Margolis): Mr. Vitco, I show you Respondents' Exhibit D. That is the one on which you identified your signature yesterday. You remember? You said this is your signature?

A. That is correct, sir.

Q. You notice the printing on the first page here the writing, printing on the first page?

A. That's right.

Q. Did you ever read that? A. No, sir.

Q. Did anybody ever read it to you?

A. No, sir. [254]

Q. Did anybody ever tell you to read it?

A. No, sir.

Q. Did anybody ever tell you what was in that language? A. No, sir.

The Court: May I see it, Mr. Clerk?

(Whereupon the document was handed to the court.)

Q. (By Mr. Margolis): Mr. Vitco, you testified that in 1948 when you became ill and you were off for one trip you didn't get paid for that trip. Remember? When you were on the Pioneer in 1948?

A. I was off for two trips.

Q. Two trips? A. That's right.

Q. Well, you were off for part of one trip, weren't you? Didn't you leave the vessel in the middle of the trip? A. That's right.

Q. And then were you off one more trip, or two more trips? A. Two more, sir.

(Testimony of Anthony Vitco.)

Q. Now, on the trip that you were off part of the trip, did the ship go back fishing after you were off, as far as you know? A. Yes.

Q. Did you get paid a full share for that trip?

A. Yes, sir, I did. [255]

Q. Now, when you came back here, because you were sick, in 1948, did you take an airplane back?

A. Yes, sir, I did.

Q. Did any owner of the boat, or did the boat pay for your transportation expense?

A. No, sir. Mr. Joncich gave me \$2 for expenses, and I paid the rest of it.

Q. Did you ever sue them for that or do anything about it? A. No,—

Q. Just tell me whether or not you did.

A. No, sir, I didn't.

Q. You didn't sue them about the wages they didn't pay you for those two trips?

A. No, sir, I didn't.

Q. Now, Mr. Vitco, I think you also testified, or Mr. Sikes asked you whether during the season when a boat came in, a man could quit; a fisherman who had been hired for the season could quit. And you said yes. A. I say yes, sir.

Q. All right. Now, under the custom does he just get up and say, "I quit"? Is that how it is done?

A. No, sir. You supposed to give the skipper notice, seven days' notice that you was going to quit.

Q. In other words, during the season seven days'

(Testimony of Anthony Vitco.)

notice [256] is required before you can quit, is that right? A. Yes, sir.

Mr. Margolis: All right. That is all, your Honor.

Recross Examination

Q. (By Mr. Sikes): Mr. Vitco, I am referring to the exhibit which his Honor is looking at, which is—

The Court: Do you wish it?

Mr. Sikes: No, sir.

Q. (By Mr. Sikes): —Exhibit D, and I want to ask you if you had ever signed any such shipping articles before this particular boat?

A. Oh, I have been signing them since '25 or '6 since I started to fish in Mexican waters.

Q. More or less 25 or 30 years?

A. That's right, correct.

Q. And did you understand that you had to sign those shipping articles whenever you went into foreign waters? A. That's right, sir.

Q. And you knew, of course, when you signed these shipping articles on December 27, 1951,—

A. Yes.

Q. —that you were going on a foreign voyage, isn't that right? A. That is right, sir. [257]

Q. What did you understand the shipping articles to refer to?

A. The only thing that I understand, that was in my knowledge, we have to give them three pictures and go to this broker and sign your name. I think that was so we can come in, back and forth

(Testimony of Anthony Vitco.)

from Mexican waters. That is all I know, I think. I don't know. Just to sign my name and age, nationality and weight and your color. That is all I know.

The Court: You sign articles like this for each trip or only at the beginning of the season?

The Witness: No, your Honor. Just at the beginning of the season.

Mr. Margolis: Your Honor saved my getting up.

Mr. Sikes: I believe that is all then, your Honor.

Mr. Margolis: No further questions, your Honor.

The Court: You may step down, now, Mr. Vitco.

(Witness excused.)

The Court: Does the libelant rest?

Mr. Margolis: Your Honor, I might say this: I am prepared to rest. I assume counsel is going to put Mr. Mardesich on. I am going to ask him questions about these articles, but I will ask him on cross examination.

Mr. Sikes: That is perfectly all right with me.

May I have just a second?

The Court: Yes. [258]

Mr. Sikes: Mr. Mardesich, please.

JOSEPH C. MARDESICH

a witness called on behalf of the respondents, being first sworn, was examined and testified as follows:

The Clerk: You may be seated. State your full name.

The Witness: Joseph C. Mardesich.

(Testimony of Joseph C. Mardesich.)

The Court: How do you spell that?

The Witness: Joseph, J-o-s-e-p-h, C. Mardesich
M-a-r-d-e-s-i-c-h.

Mr. Sikes: If the court please, in my opening statement I said that I thought the evidence would show that Mr. Viteo had come back to the United States, at the most, within 48 hours after having been seen by the doctor in Manzanillo. You may recall that. I based that on the evidence in the case which was the deposition of Dr. Martinez, who stated that he examined Mr. Viteo on January 29th and Mr. Viteo had testified he came home on January 30th, and that was at that time what I based it on. I had no intention of misleading the court at all because of those two dates there.

Mr. Margolis: I think, your Honor, that we can agree he was examined by the doctor on the 24th.

Mr. Sikes: I believe it was the 24th, yes. But in the deposition it said the 29th and his deposition said the 30th, when he came home. [259]

Direct Examination

Q. (By Mr. Sikes): Mr. Mardesich, where do you live? A. San Pedro.

Q. How long have you lived in San Pedro?

A. Since 1936.

Q. For how long have you been a commercial fisherman? A. Since 1930.

Q. Have you been fishing ever since then?

A. Yes, I have.

Testimony of Joseph C. Mardesich.)

Mr. Sikes: Now, I am going to lead a little, if may.

Q. (By Mr. Sikes): The Pioneer left San Pedro on or about December 27, 1951, didn't it?

A. Yes.

Q. And it went into the Mexican waters, is that correct? A. Yes.

Q. Can you recall approximately when the Pioneer returned from that voyage, as closely as you can? A. We came back in late February.

Q. Of 1952? A. Of '52.

Q. You were in court when we read some figures off yesterday, were you not? A. Yes.

Q. Some financial matters relative to the share of the [260] catch on certain trips. A. Yes.

Q. There was one trip that we referred to as ending in March of 1953? A. Yes.

Q. Do you recall now when that voyage began?

A. Yes, January 29, 1953.

Q. For how many of these 25 years have you been the captain or a part owner of a vessel?

A. I have been a captain since 1951.

Q. Were you ever a crew member on ships?

A. Previous to that time I was engineer, since 1944, on the same boat.

Q. And before that what was your position in the fishing industry?

A. Before that I was engineer on various other boats.

Q. I see. Now, is there a custom and practice as to the payment of shares of catches to fishermen

(Testimony of Joseph C. Mardesich.)

who become ill on a voyage and are unable to continue the voyage?

Mr. Margolis: I object to that on the ground that the question of custom and practice cannot control maritime law, your Honor, on the question of whether a seaman is entitled to wages to the end of the period of employment.

The Court: Overruled. You may answer whether there is such a custom. [261]

The Witness: Yes, sir.

The Court: How long has that been the custom?

The Witness: As far as I can remember. It has always been a custom if a man became ill on a certain voyage he received his share for that voyage.

Mr. Sikes: He received more than just his share up to when he quit. He received his share for the entire voyage.

The Court: Are these shares—is it the custom for these shares to be actually paid at the end of each voyage, following the termination of each voyage?

The Witness: Yes, they are. After we unload our fish we then know how much we are going to receive and then we make our figures and make our payments.

The Court: As I understand it, a vessel may make four or five or six trips a season, and between each trip there is an accounting, and the seamen are paid their shares for the trip last completed, is that it?

The Witness: There are cases where the boat is

(Testimony of Joseph C. Mardesich.)

in a hurry to go back out to sea again, and didn't wait for that money.

The Court: We are speaking now of custom, custom and practice.

The Witness: The custom is to make your figures before you go out again.

The Court: And pay the shares? [262]

The Witness: And pay the shares.

Mr. Sikes: You may cross examine.

Cross Examination

By Mr. Margolis:

I might say that I am caught by surprise.

The Court: Do you wish some time?

Mr. Margolis: No. I think I can go ahead.

Q. (By Mr. Margolis): Mr. Mardesich, now on this business of a custom to pay a man who becomes ill on a boat only for that particular voyage, how did you obtain your knowledge of that custom? What I mean is—well, let me make it a little more specific.

Did you just learn that from the way the boats you were on operated, or did you learn that from conversation around or from some contracts? How did you learn that?

A. I learned that from experience of my own and other boats.

Q. And this is what you generally heard about, is that right? A. Yes.

Q. Now, on this custom that you are talking

(Testimony of Joseph C. Mardesich.)

about, did that apply also to men who are hurt on the boat?

A. I am sure the man that got hurt on a boat would also receive his wages for that trip.

Q. I am talking about custom. Does he receive the wages [263] only for the trip or the entire season if he is hurt?

A. I haven't experienced anything like that.

Q. How many years have you been fishing?

A. Like I say, I have been fishing since 1930.

Q. And you haven't had any——

A. Accidents aboard——

Q. ——any accidents aboard which a man had to leave the boat in the middle of the season, sir??

A. You mean leave the middle of the season and don't come back for the rest of the season??

Q. Or makes a trip or two; just miss part of the season, part or all of the rest of the season.

A. If he got hurt aboard and he missed the rest of that trip and he was getting well ashore, he usually put another man in his place. He would not receive wages for the next trip, or his share.

Q. So the custom is if a man is hurt aboard a boat he does not get the wages to the end of the season, is that right?

Mr. Sikes: I am going to object to that, since the end of the season may have coincided with the end of the voyage. I would like to have counsel keep——

Mr. Margolis: I think the objection is good and I will rephrase the question.

Q. (By Mr. Margolis): Now, where the season

(Testimony of Joseph C. Mardesich.)

ends at a point beyond the end of the voyage on which a man is injured [264] as a result of which he has to leave the boat, is it your testimony that the custom is that he does not get wages to the end of the season?? A. Yes, sir.

Q. And when you said a few moments ago you had no experience with respect to this subject were you in error and you now recall that you have had experience on the basis of what you can testify as to custom? A. I can't remember, sir.

Q. Then what do you base the knowledge of this custom on?

A. You mean a man getting hurt aboard?

Q. Yes. A. Base it by hearsay.

Q. I see. Just that you have been told that this is the way it is done.

Has it ever happened that a man has been hurt aboard the boat you have been working on?

A. No, sir.

Q. In 25 years?

A. Yes, sir, nobody has been hurt that I know of—seriously.

Q. It is a remarkable record, sir.

A. Nobody hurt.

Q. Now, you came back from the first trip toward the [265] end of February 1952, about February 23, 1952, would that be about right?

A. Well, you mean returned to San Pedro?

Q. Yes. A. Right.

Q. About that date? Would you say that would be about right?

(Testimony of Joseph C. Mardesich.)

A. Will you tell me again what that date was?

Q. February 23, 1952. A. Yes.

Q. About that date? A. Yes.

Q. Then you went out on another trip and came back about the end of March 1952?

A. Yes, sir.

Q. You stayed in a few days and left about April 2, 1952? Would that be about right?

A. Right.

Q. You came back about May 4, 1952?

A. Yes.

Q. And then you left again about May 13, 1952?

A. Yes.

Q. And came back about June 5, 1952?

A. Yes.

Q. And then there were other trips up until the one that you came back on September 8, 1952 of that year? [266] A. Yes.

Q. That was the last trip that you made in the year 1952? A. Yes.

Q. Now, actually, between each of these trips you were in port a few days, isn't that right?

A. Yes.

Q. Five days, six days, seven days; it would vary, but it would be just a few days?

A. Yes, sir.

Q. And you didn't, for example, in the middle of the year, in, say, between the fourth and fifth trip and the fifth and sixth trip take any longer time off or do anything special between trips—

Well, I will withdraw that.

(Testimony of Joseph C. Mardesich.)

There was no time during these trips when in between trips you took any time, substantially longer than there was between the other trips? Isn't that so? A. There was a time, sir.

Q. In the year 1952? A. Yes, sir.

Q. When was that?

A. The trip after Mr. Vitco stayed ashore.

Q. And you remained in how long that time?

Do you remember? [267]

A. I don't remember, sir, but we were broke down.

Q. There had been some mechanical damage?

A. Yes, sir.

Q. And did you have to go into dry dock?

A. We went into the machine shop.

Q. You went into the machine shop. And this is the sort of a thing that happens once in a while and whenever it happens you have to go in?

A. Yes, sir.

Q. All right. Aside from that, when you came back on this first trip, was there any other trip during which you stayed in longer than five days, seven days, something like that?

A. No, I don't believe so.

Q. There wasn't any time during that year when you stayed in long enough in between trips—well, I will withdraw that.

I am talking about the period after you went out December 27, 1951, and until you came back in September 1952. I am not talking about the part of the year after September '52. A. Yes.

(Testimony of Joseph C. Mardesich.)

Q. Just that period. During that period from December to September, there wasn't any time when you came in and painted the boat and took the net off and repaired the whole net, was there? [268]

A. No, sir.

Q. Now, you did that kind of an operation in November and December of 1951, didn't you?

A. Yes, we did.

Q. When was the next time that you did that?

A. Preceding the last trip of '52 we went to the machine shop—but I am not certain.

Q. Preceding the last trip of '52? Well, let me recall that you didn't go out in December of '52. You didn't go out until January 19th. So it would be preceding that January 19th trip, is that right?

A. No, sir.

Q. Preceding what trip?

A. Preceding the September trip.

Q. You had machine trouble again at that time?

A. No. But that was a laid up period.

Q. For how long were you laid up?

A. Until we went out again.

Q. That, I am sure, is so. But how many days or weeks?

A. Well, approximately three and a half months.

Q. Well, that was after the September trip, wasn't it? A. Yes.

Q. All right. Then you and I really misunderstood each other. The ship was laid up from about September 8th, 1952 to January—well, sometime in January, about the middle of [269] January, 1953.

Testimony of Joseph C. Mardesich.)

A. Yes, sir.

Q. Now, during that time was the boat painted and the net fixed, or was it fixed after that January rip?

A. During that time.

Q. It was during that time? A. Yes.

Q. I see. And that is the time when you customarily go through this operation of painting the ship and completely overhauling the net and so forth, isn't that right?

A. Yes.

The Court: Does the master receive the same share, ordinarily, as a crew member?

The Witness: No, he receives more.

The Court: That comes from the boat's net share?

The Witness: The net shares, yes, sir.

Q. (By Mr. Margolis): Going back to the subject that we asked you about, this might refresh your recollection, isn't it a fact that in the last several years, four or five years, your own brother, who is a fisherman, hurt his back and was out a trip during the season?

A. Yes.

Q. Do you know what happened in his case with respect to whether he got paid?

A. Yes, I do. [270]

Q. Did he or did he not get paid for that trip?

A. He did.

Q. So that when a man gets hurt it is customary for him to get paid?

A. Yes.

Mr. Sikes: If the court please, the last question may very well be ambiguous. The last question, as I understand it, was when a man is injured does he

(Testimony of Joseph C. Mardesich.)

get paid. Now, I am unable to determine whether Mr. Margolis means for that voyage or for that year, or—

Mr. Margolis: I think counsel again is right, and usual.

Mr. Sikes: Thank you.

Q. (By Mr. Margolis): What I meant, and perhaps I didn't make myself clear, was he missed the trip, didn't he, or more than one trip, as a result of being hurt? A. Yes.

Q. Did he get paid for the trip he missed?

A. No.

Q. He did not?

A. You mean the preceding trip?

Q. For the trip he missed. He missed the trip. He didn't go out on a trip, isn't that right?

A. You mean he didn't go out at all?

Q. He was hurt. Is that right? He had to leave the vessel. Is that so? [271]

A. You mean the vessel was already out?

The Court: You tell us.

Q. (By Mr. Margolis): Tell us what happened.

The Court: What did happen?

The Witness: Well, there is two occasions, but only occasion is when my brother got hurt.

Q. (By Mr. Margolis): Well, that is what I am talking about, when you brother got hurt.

A. We sent him home on another boat.

Q. Then didn't he miss a trip after that? Didn't the boat go one trip without him?

A. Yes, I believe so.

(Testimony of Joseph C. Mardesich.)

Q. Did he get paid for that trip, the one that he missed? A. No, sir.

Q. So it is the custom not to pay men, according to your understanding, even when they are hurt on the boat for the trip that they missed, is that right?

A. Yes.

Q. And then after he missed that trip did he come back on the boat?

A. As soon as he was well enough.

Q. Now, when you go on a trip into Mexican waters there is a time limit that that trip can take, isn't there? A. Yes. [272]

Q. You have to get a license from—is it the Mexican government that you get a license from?

A. Yes.

Q. And under that license the trip is ordinarily limited to 70 days, or some such period?

A. Yes.

Q. In any event, wouldn't run over 90 days, the period in which you take on the trip, is that right?

A. You can stay a lot longer if you renew the license.

Q. But ordinarily how long does one of these fishing trips take?

A. The average trip is between 30—25 to 30 days.

Q. 30 days. What's a real long trip?

A. The extent of the license, approximately 70 days.

Q. That is a very long trip, isn't it, and very unusual? A. Yes, sir.

(Testimony of Joseph C. Mardesich.)

Q. So that you wouldn't think of a trip lasting 12 months into Mexican waters, would you?

A. No, sir.

The Court: Is the master counted as a member of the crew in originally dividing the share?

The Witness: Member of the crew. Divide the crew share.

The Court: And the rating of the vessel is an eight-man vessel. Does that include the master?

The Witness: Yes, that also includes the master.

The Court: The master and a crew of seven would be an eight-man vessel?

The Witness: That's right.

Q. (By Mr. Margolis): Mr. Mardesich, these articles, Exhibit D, are signed the 27th day of December, 1951. At the time these articles were signed Mr. Mardesich, Mr. Vitco and the other members of the crew had already done the preparatory work for going out, isn't that right? They had already done the painting and the fixing of the net?

A. Yes, sir.

Q. So that these articles were signed long after the men had been hired, isn't that right?

A. They are signed the day before you leave.

Q. Just the day before you leave. But the men are hired, aren't they, maybe two months before you leave so that you can get the work done on the boat that they have to do? A. Yes, sir.

Q. Now, do you know who prepared these shipping articles? A. Yes, sir.

Q. Who did?

(Testimony of Joseph C. Mardesich.)

A. Antone Despol, our broker.

Q. And he was your broker? You hired him, and not Mr. Vitco? [274]

A. That's right.

Q. Or any of the members of the crew.

Now, did you tell him what to put in here?

A. No, sir.

Q. He just put in what he thought was right, is that it, as far as you know?

A. I never read them myself.

Q. You never read these articles?

A. No, sir.

Q. You sign them but you never read them?

A. No.

Q. Do you know of any fisherman who ever has?

A. I can't recall.

Mr. Margolis: Your Honor, as I said, I was caught by surprise. I expected the testimony to cover many other subjects and, therefore, was prepared to go along. I would like about a 10-minute recess so I can see what else I must cover.

The Court: Very well. We will recess for 10 minutes.

(Short recess.)

Mr. Margolis: Your Honor, there are a couple of matters we can dispose of very quickly by stipulation. One is that the fifth trip of the season—your Honor has a list of them—I don't want to use the word "season", but the fifth trip that we are concerned with, started on June 14, 1952, and was completed on July 25, 1952. [275]

(Testimony of Joseph C. Mardesich.)

Mr. Sikes: That is so stipulated as a matter of fact, your Honor.

The Court: There is no stipulation with respect to the commencement of the other trips?

Mr. Margolis: Well, we didn't—may I state to your Honor what the importance is of the commencement of that particular trip? We are going to have an issue here as to whether there are no wages due; whether there are wages due only for a season of six months, which ends with the last trip which begins in June, or whether there are wages due for all of the trips in 1952.

I will state right now to your Honor that as far as the trip which began in January of 1953 there is no issue about that because we make no claim with respect to that. I didn't have all the facts. Now having all the facts we are not entitled under any view of the case to that one. So the exact starting date of that June trip is important because if your Honor should hold the season is the six-month season that would be included within. The exact starting date for the others, at least I can't see any great materiality.

Mr. Sikes: And I join in that statement, Mr. Margolis.

Mr. Margolis: Also, I misspoke myself in asking certain questions, your Honor. The last trip started in September and ended in October 18, 1952. And counsel, as I understand it, is willing to stipulate that all the questions and answers [276] with respect to the last trip of 1952 can be dealt with by

(Testimony of Joseph C. Mardesich.)

your Honor as though they had referred to a trip ending October 18, 1952.

Mr. Sikes: That is correct, sir, because the trip did begin in September, and undoubtedly the witness believed, as did Mr. Margolis, they were talking about the same thing, which they were in fact——

Mr. Margolis: That's correct.

The Court: Very well, gentlemen.

Q. (By Mr. Margolis): Now, Mr. Mardesich, at the beginning of a fishing season there is done this painting and the fixing of the net that we have talked about, isn't that right? A. Yes.

Q. Then at the close of the fishing season isn't it a fact that then you wash the boat, you strip the net and put away the gear?

Mr. Sikes: Objection, your Honor, on the grounds that it calls for a conclusion on the part of the witness as to what is meant by season.

Q. (By Mr. Margolis): Well, at the close of what is generally considered the season, isn't that when this is done?

Mr. Sikes: I am going to object——

Mr. Margolis: Customarily.

Mr. Sikes: ——to that, also. If counsel wants to go [277] into first as to what he thinks the season is, I believe there would be a foundation, sir.

The Court: I suggest you turn the question around the other way. There is certainty as to what was done?

Mr. Sikes: Yes, your Honor.

(Testimony of Joseph C. Mardesich.)

Q. (By Mr. Margolis): Well, without regard to season at this point, there is a time each year, or maybe more often, I am not trying to find out, when a boat that fishes tuna all year round, the crew that was on that boat washes the boat, strips the net and puts away the gear? That happens each year, doesn't it? A. Yes.

Q. And that happens once a year on a boat that fishes tuna all year round, isn't that right?

A. Yes, sir.

Q. And that once a year that that happens is in oh, October, November, December—well, October November, generally, when the boat stops fishing for a period of a couple of months, or so, isn't that right?

A. Yes, usually the slack period.

Q. During the slack period.

Q. During the rest of the time the boat is customarily—absent engine trouble or something of that kind—fishing, except in between trips, where it will be in port for a few days at a time? [278]

A. Yes, sir.

Q. Now, Mr. Mardesich, you started as a skipper of the Pioneer in 1951, was it? A. Yes.

Q. That was the first boat you had ever skippered? A. Yes.

Q. And you started there at what is customarily considered the beginning the season, did you not?

A. Yes.

Q. And that was about? About December of 1950 or December of 1951?

Testimony of Joseph C. Mardesich.)

A. December of '50.

Q. December of '50. And the season for which you were going to fish was the season which is customarily known as the 1951 season, isn't that right?

Mr. Sikes: I am going to object on the same ground as before, your Honor, that there must be some definition in this witness' mind as to what counsel means by "season" when he answers these questions, sir.

Mr. Margolis: I asked him whether, customarily, the period was known as the 1951 season. This is not my witness, your Honor, and I would like to do it this way.

The Court: Overruled. He may answer.

The Witness: You are talking about an all year round tuna boat? [279]

Q. (By Mr. Margolis): Yes. The Pioneer was an all year round tuna boat, was it not?

A. No, sir.

Q. It wasn't at that time? A. No, sir.

Q. Well, for an all year round tuna boat the season is usually referred to as the season of 1951, 1952, 1953 and so forth, isn't that right?

A. Yes.

Mr. Sikes: I am going to make my same objection, your Honor, except I have the further grounds that we are not talking now about the Pioneer but apparently some other vessel. It is uncertain and again dealing with a conflict of terms as to what is meant by "season."

(Testimony of Joseph C. Mardesich.)

The Court: Please read the question, Mr. Reporter.

(Record read.)

The Court: The answer may stand. The objection is overruled.

Mr. Sikes: Sir, may I ask what the answer was?

The Court: The answer was "yes."

Mr. Margolis: I think I have no further questions.

Mr. Sikes: And I have none, your Honor.

The Court: You may step down.

Mr. Sikes: The respondents also rest.

The Court: The libelant rests? Is there any rebuttal, [280] Mr. Margolis?

Mr. Margolis: No. The libelant rests.

The Court: Both sides rest?

Mr. Sikes: Yes, sir. [281]

[Endorsed]: Filed August 10, 1955.

[Endorsed]: No. 14909. United States Court of Appeals for the Ninth Circuit. Marion Joncich, Joseph C. Mardesich and Antonia Dogdanovich, Appellants, vs. Anthony Vitco, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: October 20, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14909

MARION JONCICH, JOSEPH C. MARDESICH,
ANTONIA DOGDANOVICH, Appellants,

vs.

ANTHONY VITCO, Appellee.

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD

Appellants adopt as their points on appeal on which they intend to rely the Assignments of Error appearing in the transcript of the record of this case.

Appellants request that the record as certified to the Clerk of this United States Court of Appeals by the Clerk of the United States District Court, Southern District of California, be printed in its entirety.

Dated October 27, 1955.

/s/ ROBERT SIKES,
Proctor for Appellants

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 28, 1955. Paul P. O'Brien,
Clerk.

